S. Hrg. 98-282

EXECUTIVE ORDER 12372: REVISED PROCEDURES FOR EVALUATION, REVIEW, AND COORDINATION OF FEDERAL AND FEDERALLY ASSISTED PROGRAMS AND PROJECTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
INTERGOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

MARCH 3, 1983

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EXECUTIVE ORDER 12372: REVISED PROCEDURES FOR EVALUATION, REVIEW, AND COORDINATION OF FEDERAL AND FEDERALLY ASSISTED PROGRAMS AND PROJECTS

THURSDAY, MARCH 3, 1983

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Dave Durenberger (chairman of the subcommittee) presiding.

Present: Senators Durenberger and Levin.

OPENING STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. The hearing will come to order.

About a year ago, this subcommittee held hearings on the rumors that the A-95 process authorized by the Intergovernmental Cooperation Act was about to be modified. The rumors have now been substantiated.

Last July, President Reagan issued Executive Order 12372 instructing Federal agencies to issue regulations implementing a new intergovernmental consultation process. The principal thrust of the President's order was to provide States more latitude in designing the consultation procedures that were to apply within their boundaries.

In January and February of this year, 28 departments and agencies of the Federal Government issued proposed rules to implement the new order. Final rules are scheduled to become effective on April 30 of this year. At the time this hearing is being held, all of the agencies are in a public comment period. Remarks made and concerns expressed at this hearing will be submitted to the agencies for consideration as part of the rulemaking process.

As the witnesses here today know, the A-95 process was close to my heart. I thought that last year's hearing on this subject was the most frank and useful exchange of views in all of the 35 days of hearings that this subcommittee held in the 97th Congress. I hope that today's record will reflect as much thought and wisdom and frankness.

We will want to explore several aspects of the proposed regulations this morning, including: The single point of contact concept; the legal sufficiency of the regulations as rules in compliance with the Intergovernmental Cooperation Act; the plans of the Office of Management and Budget to maintain this system over time; and the impact of the regulations on governments and planning agencies across the country.

Our first witness will be Mr. Joseph Wright, Deputy Director, Office of Management and Budget.

We very much appreciated your comments at our April 1982 hearing. Certainly, with all the experience you have accumulated since then, I have a right to look forward to having you share your comments with us today regarding Executive Order 12372.

I know that the staff at OMB has worked very hard in providing us with information pertaining to the order, keeping us up to date on the process since last July and I want to take this time to especially express my appreciation to you and to Hal, to Jim and all the other members of your staff for those efforts.

So I will welcome you along with Mr. Steinberg and Mr. James Kelly.

TESTIMONY OF JOSEPH R. WRIGHT, JR., DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, ACCOMPANIED BY HAROLD STEINBERG, ASSOCIATE DIRECTOR FOR MANAGEMENT, AND JAMES KELLY, DEPUTY ASSOCIATE DIRECTOR FOR INTERGOVERNMENTAL AFFAIRS

Mr. Wright. Thank you, Mr. Chairman.

If I remember, Mr. Chairman, wasn't it about a year ago, when I had not even been at OMB for a week, when we came in and had the first hearing?

Senator Durenberger. I think it was your first day.

Mr. Wright. You were very kind to me at the time. I am delighted to be back on my 1-year anniversary of coming to OMB. At that time we discussed the rumors on A–95 and now it is the implementation of the policies that are included in the Executive Order 12372.

I would like to submit my testimony for the record and just summarize it very quickly.

Senator Durenberger. It will be made part of the record following your oral testimony.

Mr. Wright. Thank you.

Since the time the President signed Executive Order 12372, OMB has been working with 29 Federal agencies on the development of regulations to implement that Executive order.

I don't believe I have to go through the main reasons why we felt that improvements were needed in A–95, Mr. Chairman, except to say we felt that it was a Federal Government approach toward a review process which should be more oriented toward State and local governments. And the Federal Government was inconsistent in its application. We felt there was a need for a change.

The new Executive order also supports the President's overall federalism concept which is returning certain responsibilities to the State and local governments while also providing regulatory relief to these entities.

The approach is fairly straightforward. It requires that all agencies providing financial assistance or undertaking direct development projects utilize State designated processes rather than Federal to obtain State and local officials' views.

Second, communicate with the State and local governments as early as reasonably feasible in the program planning process.

Third, make efforts to accommodate recommendations of these State and local elected officials formally submitted through the official process.

Fourth, explain the basis for Federal decisions in cases of nonaccommodation, and, fifth, allow States to simplify and consolidate the federally required State plans and potentially substitute their own processes.

Government-wide implementation of this Executive order has been unique. To do this, we had first to resolve the 31 policy issues which were the foundation for the proposed rules and I would like to submit a copy of these 31 policies for the record, if I may.

Senator DURENBERGER. It may be made part of the record.

[The information referred to follows:]

DEC 20 1982

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS
EXECUTIVE ORDER 12372

POLICY ISSUES AND DECISIONS

ISSUES	DECISIONS
SPECIFICATION OF STATE PROCESS:	
1. How should a state notify OMB about its state process or modifications?	An OMB letter will be sent to each state advising that it needs to provide OMB with an assurance that it has developed a state process that conforms with the provisions of the Executive Order and identifies the official state entity(ies) (see Issue #11).
2. Should there be a time limit on when states must specify their process?	No: The OMB letter will state that there will be no time limit, but will encourage specification before April 30.
3. Should there be any constraints on when a state can change its process?	No: The OMB letter will state that there are no time constraints, if a state wants to change its process.
4. Should the state provide assurance that there has been local consultation in the development of the official state process, including program selection decisions?	Yes: The OMB letter will direct the states to provide assurance in the notification to OMB of local consultation in the development of the state process and the program selection decisions.
5. When should the states advise the Federal Government of decisions to include a particular program?	The OMB letter will tell the states that they can advise the Federal Government at any time (see Issue #10).
6. Must the delegation to local governments for review be limited to specific cases?	No: The OMB letter and the preamble to the regulations will state that there is no limitation to the states' power to delegate. They may delegate specific cases, whole programs, etc.
7. How should comments for delegated instances be communicated to the Federal agencies?	The OMB letter will advise the states to send all comments, including those in delegated cases, through the designated state's single point of contact (see Issue #11). The regulations will direct the agencies that if the comments are received from the state single point of contact, the requirements of the regulations must be complied with.

ISSUES	DECISIONS
8. Should the Federal Government provide guidance to the states concerning the minimum elements of a state process?	The OMB letter to the states will specify the minimum elements.
9. How will the Federal Government review the state specification of the process?	The OMB letter will advise the states that OMB will check for assurance of conformity with the Executive Order and designation of the official state entity(ies).
10. Should there be a time period between the recognition of the state process and the initiation of Federal/state communications?	The regulations will require the agencies to begin the communications process as soon as feasible, based upon individual programs and projects. Agencies have authority to set deadlines for a particular program.

COMMUNICATIONS WITH THE STATES AND OBTAINING COMMENTS:

ISSUES	DECISIONS
11. Should each state be required to designate a single point of contact to communicate state concerns to Federal agencies in its official state entity(ies)?	The regulations will require the agencies to comply with the requirements when the comments are received through the state's single point of contact.
12. Must a certification from elected officials accompany each submitted comment?	The OMB letter will advise the states that it is not necessary. Since the Executive Order requires involvement of elected officials, there will be a requirement for a certification of involvement of elected officials in the designation of the official state process. It would be inappropriate, under Federalism, to require that every comment have a certification of the involvement of an elected official.

ISSUES	DECISIONS
13. How will the requirement to "communicate . . . as early in the planning cycle as is reasonably feasible" be defined?	The regulations will repeat the wording from the Executive Order without elaboration.
14. Should the states have to provide their comments within a specified period?	The regulations will require the agencies to allow a minimum of 30 days for comment, except for unusual circumstances. Agencies may specify starting points for comment periods and maximum timeframes.
15. Should there be requirements defining the composition of a state's comments?	The preamble to the regulations will encourage the inclusion of relevant comments relating to statutes, regulations, and other requirements governing a specific agency and program.
16. Should a state be required to specify the magnitude of its concerns?	The preamble to the regulations will encourage the states to clearly differentiate the magnitude of concerns, but leave the method for doing so up to the states.
17. What will "make efforts to accommodate state and local elected officials' concerns" mean in practice and how will "accommodate" be defined?	The regulations will define accommodate as: to accept the states' views or seek a mutually agreeable position. (In cases of non-accommodation, see Issue #18.)
18. Must the agencies provide a written response in cases of non-accommodation?	The regulations will require the agencies to provide a written response if requested by the Governor, signed by an agency head designee, that includes a reference to the waiting period cited in Issue #19. The regulations will state that they do not create any rights to judicial review.
19. Will agencies be required to institute an appeal or review procedure?	No: However, the regulations will require that the agencies wait 10 days, unless otherwise prescribed in statute, before implementation of a decision in which there was non-accommodation, unless such a waiting period is not possible, in which case there must be an automatic internal review by an agency head designee.

ISSUES	DECISIONS
20. What kind of monitoring of the process is appropriate? & 21. What records should the agencies and OMB keep and how will these requirements be prescribed?	A separate memo will be sent to the agencies prescribing non-regulatory OMB guidance which will require maintenance of a record of all instances of non-accommodation; no routine reporting will be required, although there will be a one time report to OMB in order that OMB may provide the E.O.-required two year report to the President.
INTERSTATE ACTIONS:	
22. How will the requirement for Federal agencies to "seek the coordination of views of affected state and local elected officials" in interstate situations be interpreted?	The regulations will require agencies to identify interstate situations (wherever possible), specify and notify affected states, including those without an official state process, and provide a minimum review period of 45 days, except for unusual circumstances, in order to obtain comments that include the views of the other affected states.
23. How would states' views be exchanged in interstate situations where one or more states do not have an official state process or have not selected the program for coverage under their official process?	The preamble to the regulations will encourage each state to share its comments with and obtain the views of other affected states, using the other state's single point of contact, if there is one, or an appropriate state official if there is not a single point of contact.
24. What would be the Federal role in interstate situations that produce conflicting recommendations?	The preamble to the regulations will encourage the states to reconcile differences. When differences cannot be reconciled by states, Federal agencies will not attempt to reconcile them. OMB will consider issuing guidelines to help agencies approach these situations.

ISSUES	DECISIONS
STATE PLANS:	
25. How will the states be allowed to simplify and consolidate existing Federally-required state plan submissions?	The regulations will require the agencies to accept, where permitted by law, a state's decision to submit a simplified or consolidated plan without granting a prior approval. Federal agencies can review the content of modified plans.
26. How will states be encouraged to substitute state plans for Federally-required state plans?	The preamble to the regulations will state the Federal Government's willingness to provide consultation and assistance for substituting state plans. The regulations will require the agencies to accept a state's decision to submit a substituted plan without granting a prior approval. Federal agencies can review the content of substituted plans.
27. Need there be a procedure for determining whether state planning and budgeting systems are "sufficient" enough to permit substitution of state plans?	No. Indeed, the preamble will describe the Federal Government's intent to accept submissions of substituted state plans and limit the review to a determination that the required information is contained therein.
28. What are the definitions for "simplify," "consolidate," and "substitute" as they pertain to the Federally-required state plan submissions?	The regulations will define the terms. For purposes of discussion, simplify means that a state can develop its own format, choose its own submission date, and select the planning period. Consolidate means that the state can meet statutory and regulatory requirements by combining two or more plans into one document and that it can select the format, choose the submission date, and select the planning period. Substitute means that unless prohibited by statute, a state can submit a plan or other document that it has developed for its own purposes to meet Federal requirements.

ISSUES	DECISIONS
29. Should there be a definition of the "Federally required state plan submissions" for which state plans can be simplified, consolidated, or substituted?	No, but there will be a separate Federal Register notice that also states the Federal Government's willingness to consider additional candidates. Non-capped entitlement program plans will not be included.
30. Should any procedural requirements be associated with a state's simplification, consolidation, or substitution?	The preamble to the regulations will encourage states to notify Federal agencies of their intentions prior to the submission of simplified, consolidated, or substituted plans.
31. Should there be a special "appeals" process for disapproved simplifications, consolidations, or substitutions?	There need be no special appeals process specified in regulations since a simplified, consolidated, or substituted state plan will either be sufficient or not. However, the OMB guidance to the agencies will encourage the agencies to be as receptive as possible. In addition, guidance will suggest early discussion between state agencies and Federal officials regarding proposed simplifications, consolidations, and substitutions to avoid any chance of unexpected disapproval by agencies of state proposals for simplified planning.

Mr. WRIGHT. On January 24 of this year, 26 Federal agencies published in the Federal Register the notices of proposed rulemaking and these were virtually identical rules published at one place and at one time. That is unique in my experience in Washington.

The public comment period closes this coming March 10 and agencies are to adopt final rules on April 30 at which time the existing A–95 regulations will be rescinded.

So far, Mr. Chairman, we are on schedule.

We have attempted to include as many programs as possible, including expanding the number of direct development activities. We believe the new system will provide many benefits for the State and local governments, including simplification. This will result in over an 82-percent reduction in the existing A–95 regulations. I wish we could do as well in many of our deregulation efforts.

This is a consistent, simple approach for Federal responsiveness. Federal agencies are required to utilize the State's consultation process, unless precluded by existing Federal statutes or regulations, and Federal agencies are required to make efforts to accommodate State and local concerns or explain why not. It is also flexible. Each State and its local governments are permitted to develop their own consultation process and the States and local officials can select which Federal programs to review based on their priorities, not ours.

The only requirement for these State and local governments is to complete the review within a specified period and transmit their official comments, which they want treated under the Executive order, through a single point of contact.

We have been very diligent to keep State and local officials informed about the status of the Federal implementation efforts. On six occasions since July, we sent information to them. I have a summary of the contents for the record, if I may, of these mailings. We also did a telephone survey last week and we found that 49 States plan to designate a process by April 30, 1983.

I also would like to share this preliminary information with you for the record.

[The information referred to follows:]

3/2/83

E.O. 12372 MAILINGS

Date	Sent To	Material Sent
5/5/82	*State Network	- OMB testimony before U.S. Senate Subcommittee on Intergovernmental Relations, Committee on Governmental Affairs on Proposed State/Local Review Policies
7/16/82	*State Network	- E.O. 12372 - Fact Sheet
9/29/82	*State Network	- Letter to Governors asking for E.O. contact
10/14/82	*Federal, State, & Local Officials Intergovernmental Organizations	- "Significant Features" - describes the opportunities S/L governments have under E.O. - Regulatory schedule - Q&As - Letter to Governors requesting identification of state contact. - List of E.O. intergovernmental contacts in each federal agency.
12/21/82	*State Network & State E.O. Contacts	- 31 Policy issues and decisions - Q&As
1/28/83	*State Network & State E.O. Contacts	- 1/24/83 Federal Register notice on proposed rules for 26 federal agencies. - OMB letter to Governors on information a state needs to provide OMB as notification that it has established an intergovernmental review process. - Fact Sheet - Updated listing of E.O. contacts - Q&As
2/15/83	*State Network and State E.O. Contacts	- 2/14/83 Federal Register notice regarding E.O. Public Meeting - 1/27/83 Federal Register notice containing OMB's letter to Governors on information a state needs to provide OMB as notification that it has established an intergovernmental review process. - Updated listing of Federal agency intergovernmental contacts.

* Mailings sent to State Budget Officers, Legislative Fiscal Officers, Auditors, and Governors contacts for intergovernmental affairs; state and local interest groups, Congressional contacts, and Washington representatives of Governors and legislatures

MAR 3 1983

State and Local Implementation Activities
(Preliminary Information - Telephone Survey 2/28/83)

Designate a Process (50 states contacted)

49 states plan designation of process by April 30, 1983

12 adopting existing process

37 plan to modify existing process or make interim designation.

NOTE: Delaware and Hawaii have already developed their process. Wisconsin and District uncertain of their plans.

States Consulting with Local Officials

48 states actively consulting with local officials.

33 state/local governments are involving areawide and regional planning organizations.

NOTE: Consultations range from providing written materials to meetings and legislative hearings. Alabama only state without plan for consultation with local officials.

Comment on Rules

29 plan to make formal comment on the agencies proposed rules.

[PRELIMINARY DATA,
OBTAINED BY PHONE
SURVEY, 2/25, 2/28/83]

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN E.O. MEETINGS OF STATE/LOCAL OFFICIALS
ALABAMA	Yes	Existing	None	None	Yes, in future	Yes
ALASKA	Yes	Modified	Written info has been sent to local officials	30-day review period	Still formulating	No
ARIZONA	Yes	Modified/ Existing	Yes, meetings with COG's	Fed compliance with State policies	No	Yes
ARKANSAS	Yes	Existing	Yes--Meetings held with Plng. and Development Districts	Will there really be input and will it make a difference.	No	No
CALIFORNIA	Yes	Interim (Until new Director is decided)	Yes--Meeting with League of Cities & Reg'l Planning Council	Single point of contact and exemptions by agencies	Yes	Yes
COLORADO	Yes	Modified	Yes--Formed Task Force of state and local groups	Single point of contact compliance of Federal agencies	Yes--Will be presented in Wespo letter	Yes
CONNECTICUT	Yes	Modified	Yes--Established Advisory Cmtees, Conn. Conf. of Municipal Council of Small Towns	Where do Environmental Impact Statements stand, clarify state plan review	Yes, present on the 10th	Yes

[PRELIMINARY DATA,
OBTAINED BY PHONE
SURVEY, 2/25, 2/28/83]

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN E.O. MEETINGS OF STATE/LOCAL OFFICIALS
DELAWARE	Yes--State process has been decided	Modified and amplified in terms of making it more stringent	Local officials and their staffs in terms of computer bulletins	Federal agencies will ignore states, state concerns won't be considered, block grants have been waived for state comments	Yes	Yes (Statewide)
DISTRICT OF COLUMBIA	Uncertain	Uncertain	No	None	No	No
FLORIDA	Yes	Modified implementation will be over 2-yr process	Yes--Draft procedures sent to Regional Plng Councils, State Assoc. of County Commissioners, League of Cities & large municipalities for review & comment	30-day review period, single point of contact, Federal compliance with policies	Yes--Regional Planning Councils will submit to OMB	Yes
GEORGIA	Yes	Modified	Yes, government state and local task forces	None	No	No
HAWAII	Yes	Modified	Yes	None	No	No

[PRELIMINARY DATA,
OBTAINED BY PHONE
SURVEY, 2/25, 2/28/83

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN OTHER E.O. MEETINGS=
IDAHO	Yes	Modified	Yes--Areawide meetings with Council of Governments to discuss regulations and Federal level of involvement	30-day review period. Publication of exclusions rather than inclusions by agencies.	Yes, from Governor incorporating local & state concerns	Yes
ILLINOIS	Yes	Existing	Yes--Meetings held with city representatives, Chicago Council, Municipal League and areawide clearinghouses	Duplication of paperwork and effort, increase cost to state	No definite comments yet	Yes
INDIANA	Yes	Existing process will be used as interim process until Oct. 31, 83; then state will shift to a modified process	Yes--Meetings held with Association of Cities and Towns, Association of Indiana Counties	Adequate input by states when grants are actually made, Federal sensitivity to states problems	No	Yes
IOWA	Yes	Existing will be used as interim process. State will have meetings with new process planned by 6/1/83	Yes--Public hearings involving local elected officials. State has held nine hearings so far.	None. They believe this is an excellent process for the state of Iowa	No	Yes

[PRELIMINARY DATA,
OBTAINED BY PHONE
SURVEY, 2/25, 2/28/83

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN OTHER E.O. MEETINGS
KANSAS	Yes	Modified	Yes--With reps. of Kansas League of Municipalities & Assoc. of Counties & Reg'l Plng. Comm. published notice in Kansas register	Trying to decide which program to review	No	No
KENTUCKY	Yes	Modified	Yes--Kentucky is using 15 Area Development Districts for local participation.	OMB oversight of process, Federal agency accommodate state comments.	Yes	Yes
LOUISIANA	Yes, but it may require some legislation.	Existing. Will be some changes since more serious review process developing.	Yes--Planning and Development District meeting with Municipal League	Concerns are being withheld until formal submission	Yes--Being prepared	No
MAINE	Yes, but uncertain about reaching deadline.	Modified	Yes, by phone with Maine Municipal Asso. & Policy Comm.	Will it work?	No	No

[PRELIMINARY DATA,
OBTAINED BY PHONE
SURVEY, 2/25, 23/28/83

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN OTHER E.O. MEETINGS
MARYLAND	Yes	Modified	Yes--Open meeting with state and local agencies. Input by Md. Municipal League and Md. Assoc. of Counties. Governor established 15 member Advisory Council, public hearing before Federal Commission of Md. Legislature.	Federal compliance with state procedures. State required compliance with Federal laws.	Yes--State and local comments will be submitted.	Yes
MASSACHUSETTS	Yes	Modified	Yes, with all chief state and local elected officials	OMB's role -- Interaction with Federal agencies	Yes	No
MICHIGAN	Yes	Existing/ Interim	Yes, with local Govt Asso, Cities & Townships	Federal compliance.	No	Yes
MINNESOTA	Yes	Modified	Yes--Formal mtgs. with Local Gov't Asso. League and County Asso. Regional Planning Councils and areawide planning organizations	Single point of contact. Method of delegating review authority.	Yes, from Governor's Office.	Yes

[PRELIMINARY DATA,
OBTAINED BY PHONE
SURVEY, 2/25, 2

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 8/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN OTHER E.O. MEETINGS
MISSISSIPPI	Yes	Modified	Yes--Questionnaire sent to local government officials and municipal and county assoc.	None at this time	Yes	Yes
MISSOURI	Yes	Modified: but similar to A-95	Legislative Task Force, state and local elected officials and members of special interest groups devised the new process.	Will Federal agencies react to state comments?	No	Yes
MONTANA	Yes	Interim	Yes, channeled through local associations.	30 day review period	Yes, state review with local participation	Yes
NEBRASKA	Yes	Existing. All applications authorized by statute to flow thru Governor. Gives Gov. veto power over application	Yes--Meetings across state with local clearinghouses--county and city officials have been contacted.	Regulations and materials issued do not accommodate the state	Yes--Submitted in WESPO letter	Yes
NEVADA	Yes	Modified	Yes	None	Yes	Yes

[PRELIMINARY DATA,
OBTAINED BY PHONE
SURVEY, 2/25, 2/28/83

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	?PLAN OTHER E.O. MEETINGS
NEW HAMPSHIRE	Yes	Combination of existing and modified	No, plan to meet in March with Municipal Asso.	Degree to which Federal agencies will cooperate & accept state plans	No	No
NEW JERSEY	Yes, but not by 4/30/83	If process is developed, it will be combination of existing process with modification	Yes, with county planning representatives.	Fed. listing of exclusions instead of inclusions. State be given complete flexibility for pgm concept--EO	No	Yes
NEW MEXICO	Yes	Existing	Meetings in every district with local planning and devel. agencies	Nonconformity of regulations	Yes	No
NEW YORK	Yes--Likely by 4/30; due to fiscal constraints, state may abolish review system	Modified	Yes, with reps of areawide clearinghouses & local elected officials	Continuous existence of state areawide clearinghouses in view of reduced funding from HUD	Yes--Budget Division accommodating state and local community	Yes
NORTH CAROLINA	Interim--Stat will implemen a process on 7/1/83 due to state administrative requirements. Will use A-95 untilthen	Modified. Process will be used by July 1, 1983.	Yes, Municipal League, County Associations are meeting with Governor's local Gov't. Advisory Commission.	DOE's regulations are not acceptable. 30 day review process.	Yes	No

[PRELIMINARY DATA,
OBTAINED BY PHONE
SURVEY, 2/25, 2/28/83

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTAITON UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN OTHER E.O. MEETINGS
NORTH DAKOTA	Yes	New	Yes-- State agency heads are meeting with mayors and city councils; will hold public hearing after local comments.	Federal compliance with policies.	Yes	Yes
OHIO	Hope to by 4/30; if not, Governor will continue with A-95	Modified, if deadline is met	Yes--Formal mtg. held w/Intergov'tal Review comprised of local & state elected officials & some appointed	Accommodation of local officials	No	Yes
OKLAHOMA	Yes--However, designation of review process is dependent upon legis.	Modified Legislatively	Meeting with planning district on individual basis.	30 day review period. Federal compliance with agencies	Yes	No
OREGON	Yes	Modified. State will delegate to locals	Yes, meetings with all local agencies.	HUD has not listed exceptions.	No	Yes
PENNSYLVANIA	Yes	New Process	Yes--Meetings with areawide planning organization	Program coverage	No	Possibly

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SURVEY, 2/25, 2/28/83]

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN OTHER E.O. MEETINGS
PUERTO RICO (COMMONWEALTH)	Yes	Existing	No, but will be	Meeting April 30 deadline	No	Yes
RHODE ISLAND	Yes	Modified	Yes--With chief elected officials	None	No	Yes
SOUTH CAROLINA	Yes	Existing	Yes--Meetings with Regional Planning Councils	None	Yes	Yes
SOUTH DAKOTA	Yes--Probably State clearinghouse already serves as a single point of contact.	Existing Existing	Yes, met with local working groups.	N/A	N/A	N/A
TENNESSEE	Yes	Modified	Yes--Local councils of gov't & county and local officials	HUD Regulations	Yes	No
TEXAS	Yes	Existing	Yes--Met with Regional Plng. Commissioners in a statewide mtg.	Nonconformity of rules among all Federal agencies.	Yes	No

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SURVEY, 2/25, 2/28/83

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN OTHER E.O. MEETINGS
UTAH	Yes	Modified	Yes--Local input through Advisory Commission on Community Affairs	States may not accept responsibility on what to review.	No	No
VERMONT	Yes	Existing	Yes, by letter with regional commission	Program coverage for HUD and DOI	No	No
VIRGINIA	Yes	Modified	Yes--Meetings held with locally elected officials and with Dir. ofl Municipal Leagues & Associations of counties. Work groups formed	30 day review period	Yes--Secretary of Administration & Finance will submit	Yes
WASHINGTON	Yes	Modified	Yes--Advisory Comm of reps. of local & state gov't are meeting on proposed implementation	Single point of contact; 30 day review	Yes, local comments will be forwarded through Nat'l Assoc. of Counties	Yes

[PRELIMINARY DATA,
OBTAINED BY PHONE
SURVEY, 2/25, 2/28/83

STATUS OF STATE AND LOCAL E.O. 12372 IMPLEMENTATION ACTIVITIES

STATES	PLAN TO DESIGNATE A STATE PROCESS BY 4/30/83	TYPE OF PROCESS	LOCAL CONSULTATION UNDERWAY	MAJOR CONCERNS	COMMENTS ON NPRMs	PLAN OTHER E.O. MEETINGS
WEST VIRGINIA	Yes	Modified	Yes-- Letter was sent to mayors and county officials; Mayors have met with public officials in regions	Single point of contact places too much burden on clearinghouse	No	Yes
WISCONSIN	Yes--Possibly by April 30	Modified (if implemented)	Yes-- Meetings with Planning Groups & Org. Reps of elected officials	None	Yes--Submit documented testimony	No
WYOMING	Yes	Modified	Yes--Local gov't coordinating comm. has met in terms of advising Governor and discussing effects of implementation	30 day review; Definition of Federal involvement	Yes--Submit with 16 other states in WESPO letter	No

Mr. WRIGHT. The Federal agencies currently are prepared to consider all views during the public comment period and OMB is meeting weekly with these agencies to encourage the advanced planning and coordination of the final rules.

Mr. Chairman, the single point of contact is the designated office or official that communicates the official views of elected officials, but I must emphasize this need not be the only channel of communication.

We feel, if the comments that States and local officials wish treated under the order are channeled through a single point of contact, Federal agencies will focus special attention on them and make serious efforts to accommodate the views or explain why they cannot. It will help agencies to focus on those proposals the State or local governments consider to be significant. It will minimize conflicting views and we think it will insure a timely and thorough Federal response.

Another area of concern I know you have is the legality of the regulation: Its adherence to the Intergovernmental Cooperation Act, the Demonstration Cities and Metropolitan Development Act, and other Federal statutes.

The consultations that are set forth in those statutes will continue. The purpose of this Executive order is simply to establish a special process whereby the State and local governments can take up matters of special concern through a specifically designated office and obtain an accommodation or explanation.

The proposed agency rules to implement Executive Order 12372 carry out the Intergovernmental Cooperation Act's title IV provisions that speak to the issuance of regulations which insure that State and local viewpoints on Federal programs and projects are considered.

The last area of concern that I would like to discuss is OMB's oversight role. All agencies have agreed to maintain records of all nonaccommodations. As you know, this was not done previously under A–95. OMB plans to periodically review the agency performance and in 18 months we are going to evaluate thoroughly the effectiveness of the new policies.

Suggestions have been made about an expanded OMB role, including acting as a last resort for appeals, resolving conflicts, and being a leader in inter-Federal situations. Mr. Chairman, we do not feel that OMB should assume responsibility for any of these roles. We feel that that is the responsibility of the State and local officials to resolve their own conflicts or to work with our agencies who are responsible for carrying out their programs.

In closing, Mr. Chairman, let me say that a great amount of work has been done since our hearing last year. I think that OMB and the Federal agencies have worked very well under the circumstances to make changes which will be a dramatic improvement in our entire consultation process.

You can be assured, though, that we will continue to be sensitive and responsive to ways to improve these relations between State and local governments and the Federal Government.

We believe we are taking a very determined and positive step on an important part of the implementation of the President's federalism program.

Thank you, very much, Mr. Chairman.

Senator Durenberger. Thank you very much.

Let's start with the single point of contact issue. Would you state for us again the purpose of the single point of contact requirement?

Mr. Wright. Yes, sir.

The single point of contact would allow State and local governments to establish a coordinated response on any of the programs on which they are presenting their views. It would enable them to present their views in such a way that they will receive what you could call a more attentive response from the Federal agencies, where an accommodation is to be provided or an explanation made as to why that accommodation is not being provided.

Senator Durenberger. So, in effect the principal purpose is to have State and local governments resolve the conflicts rather than have those conflicts go up to the Federal agencies for resolution?

Mr. Wright. In part, but it is also so that the comments can be focused from a single point into the Federal agency and receive the attention that they deserve.

Senator Durenberger. I understand that from the viewpoint of the Federal agency. But, isn't the whole process of negotiation weighted very heavily, then, in favor of one party to the negotiation, that is, the State? Would you, as a Government official, enjoy entering into a negotiating process with somebody, knowing that the other guy is going to actually write up the terms of that agreement regardless of what you happen to negotiate?

Mr. Wright. There are two points, Mr. Chairman, I would like to make. First of all, this process makes it possible for the Federal agency to clearly recognize when an official response under the State process comes in. Second, it does not preclude any other comments coming in from within the State or from any of the local governments. So, even though a local government would go through the process to try to come up with a coordinated official position communicated through the single point, the local government would also have the opportunity to consult under the consultation process available to them now under the two acts.

Senator Durenberger. But isn't it true that the regulation requires the Federal agency to accommodate the views of the State government, while there is no similar requirement in terms of accommodating local governments? So, at best they get their views presented, but they are going up against a requirement that only says the Federal agency must accommodate the views of State government?

Mr. Wright. But that is primarily the way the process exists right now between the Federal Government and the State and local governments. So, they will have the process that exists currently plus this additional special process through a single point of contact which then communicates the official view of the State.

Senator Durenberger. What is the current situation? I am looking at the situation and trying to be realistic about how these agencies operate, and how it would be different under the new regulations. You have a bureaucrat out in a regional office, or in Washington, where the decisions are made. Is it at all likely that the bureaucrat is going to inject himself or herself into a conflict between State and local governments and side with the locals?

Mr. **Wright**. Again, if the Government does not side with the local government and the official view of the State is different than the local government, the local government still has the right for consultation that they have at the existing time. So, in other words, they could come in and you could have conflicting views. At that point the only thing that you gain from it is that the Federal agency knows what the official view is of the State. They also know they have conflicting views and they divide on this issue.

Senator **Durenberger**. Let me just try a possible alternative on you and see how you would react to it. It appears from the information that we have available to us that the current A-95 process is going to be, for the most part, simply reauthorized by the States under the Executive order. So we will largely be dealing with the same entities we currently have, State and area-wide clearinghouses. Suppose we have a system where the views of all parties are accommodated, except in the situation where accommodation just is not possible because of a conflict in views?

When such a dispute arises the agency would simply return the comments to the State and local agencies and give them 30 days to resolve the conflict. If such resolution wasn't forthcoming in that 30-day period, the agency wouldn't be bound to accommodate anybody's views. Is that a practical way to go about the process?

Mr. **Wright**. Mr. Chairman, the way I look at this is that this State process, under the Executive order, is on top of the existing process. The purpose of it is to be able to put more responsibility for resolving these conflicts at the local level. The only comment I would add is if that does not work, as in the circumstance you are talking about, then State or local governments can still come in, whether it be with the State views or the local views, to the Federal agency as they do at the present time.

Senator **Durenberger**. You and I and the agencies would really like to avoid that, and the whole purpose of Executive Order 12372 is to try to get this conflict before it gets to us. I am just asking if you see any practicality in this kind of a mechanism, or would you at least be willing to take a look at it as you go through the rulemaking process?

Mr. **Wright**. There is the time period, there is the process and there is a single point of contact. Do you wish us to relook at just the single point of contact?

Senator **Durenberger**. I am focusing right now on the dispute resolution. If they can't do it within the first 30 days, you, in effect, tell them that you are going to give them 30 more days to resolve the conflict, and that if they haven't, you are going to do it your way, regardless of their views.

Mr. **Wright**. Mr. Chairman, we are already getting comments on that time period. Yes; we are flexible as to whether or not it is going to be 30 days or somewhat more than that. We even heard a recommendation that we should make it somewhat more than that to begin with, then see how it works, and see if you can't bring that time period down later on. That might very well be a good way to go.

Senator **Durenberger**. I am glad you are thinking that way. In terms of the 30 days, I would like to suggest to you something that might be helpful to all of us. I know it would be informative to some of us here in the congressional process and it might lend some credibility to an extension of time.

You have a legislative clearinghouse at OMB where you review bills that are introduced in the Congress and sent to your agency for comment. Perhaps you could calculate the average number of days that it took OMB to review bills during the 97th Congress. I may be wrong, but I suspect it might be more than 30 days. I would appreciate it if you would go through that process and then submit to us for the record of our hearing the time that it actually took, where you had to extend the time period and why. That might be informative with respect to this question.

Mr. **Wright**. Mr. Chairman, I would be happy to. I think what you may find, though, is that the time period will be substantially less than that period of time. That is one of the problems we have at OMB. We normally don't have enough time to do the review we'd like to do.

Senator **Durenberger**. Are you spending all your time on the congressional legislative process?

Well, let's go on. I am now going to take the opportunity and the pleasure to welcome a colleague that I have been trying to entice onto this subcommittee for the last couple of years because of his personal experience and background in the areas that we deal with. All you have missed in the last 2 years, Carl, is 37 hearings of this subcommittee. But I welcome you to the subcommittee and to this hearing today. Carl is a former councilman of the city of Detroit, and I think he probably understands the practical application of things that we deal with on this subcommittee more than most people in the Senate.

On top of that, he even has a reputation for hard work—both quality and quantity of work—in the Senate. So, Carl, do you have comments or questions?

Senator **Levin**. I think I had better shut up after that introduction. [Laughter.]

Thank you very much, Dave. I really appreciate the words. I am delighted to be with you on this subcommittee. You are the leader in the area of intergovernmental relations in the Senate and I am really happy to just participate in a small way in the kind of efforts you make to keep local government relevant in our society. I was interested in Mr. Wright's comments about the purpose of this Executive order being to place more responsibility at the local level.

I presume that you meant State level by that comment.

Mr. **Wright**. No, Mr. Levin. It is both State and local.

Senator **Levin**. That is the purpose of the order, to increase the amount of responsibility at both levels?

Mr. **Wright**. Absolutely, yes.

Senator **Levin**. The Model Cities Act requires that applications for Federal assistance in metropolitan areas be accompanied by comments of the area-wide planning agencies, I gather. Is that right?

Mr. **Wright**. Yes.

Senator **Levin**. Will that continue to be required?

Mr. **Wright**. Yes, sir, I think it will.

Senator **Levin**. You say you think it will.

Mr. **Wright**. I am getting the minority opinion here.

Mr. **Kelly**. We have no intention of encouraging or even allowing Federal agencies to violate the provisions of that act. As you know, many of the States already have established those entities in law. I think there are at least 26 or 27 States that have done so. From our recent survey, what we are finding is 30 or more States are incorporating those entities into their State process that they plan to designate by May of this coming year.

Our assessment is that by and large, even without us doing anything, most of the provisions of that act will be adopted as part of the State process and as a consequence the area-wide bodies will be a regular part of the State and local conflict resolution and State and local consultation process. If by any chance they are not through one of three ways: one, that the State chooses not to designate a process at all; or two, by a State designating a process that did not include them; or three, by having program coverage which was not the same as that act. Then, we would have the agencies abide by the act in those specific instances.

In fact, we would make sure that they sought comments of the area-wide bodies on those particular programs that are mentioned in that act.

As Mr. Wright indicated, we expect that the provisions of that act will be continued if one of those three ways that I mentioned ever occur. In fact, we will assure that it will be continued.

Senator LEVIN. How are you going to assure that? Is that going to be another Executive order?

Mr. KELLY. Following our basic deregulation intent, we are trying to minimize additional directives.

Senator LEVIN. Will it be by regulation? You use the word "assure"?

Mr. KELLY. I say "assure." I am saying we have several options before us. One is to monitor the States' actions and, in fact, if the situation that I mentioned in the first part of my previous answer is the model as to what is happening around the country, then most of the States will take care of it and there may not be any need for Federal regulation. However, if the States do not take care of the provisions of this act in some way or other, we will, through some form of directive, insure that our Federal agencies are fully aware and reminded of their responsibilities under those acts, both the Intergovernmental Cooperation Act as well as the Model Cities Act. Whether or not that has to go all the way to the form of a regulation, we had not yet decided.

Senator LEVIN. You are saying that there will be a directive?

Mr. KELLY. I am saying it is necessary.

Senator LEVIN. You know there are not going to be 50 States acting within the next few days. You know very well it can't happen as a practical matter. Some States are not going to be acting in time. Maybe all 30 haven't acted. I haven't looked at all 30 to see whether or not they have complied with the Model Cities Act. Are you saying that all 30 that have acted have complied with that act?

Mr. KELLY. No; they have not acted as yet. What I am saying is, as a result of our telephone survey, we are getting a status report on where they are. I am saying some 30 or more have told us that they will be involving those bodies in the process that they will designate.

Senator LEVIN. Are you going to determine whether that involvement satisfies Federal law in each case? You are going to go State by State, say State A, yes, the way you have involved those area-wide bodies satisfies the law; State B, yes; State C, no; State D, yes. Will you be making a compliance review of some kind?

Mr. KELLY. I don't think that will be necessary. I am not sure that we have to go all the way through to examine the State process.

Senator LEVIN. It is a Federal law you are enforcing, isn't it?

Mr. STEINBERG. I think what we are coming down to is that point. It is a Federal law and we don't need a law or Executive order to tell the people to obey the law.

Senator LEVIN. Except you do have an application that comes in that you have to rule on, and you are ruling as to whether or not that application meets Federal law, and Federal law requires that certain comments be considered, so that in every case you are going to have an application that you have to rule on and you are making the decision as to whether that complies with the Federal law. Is that not right?

Mr. STEINBERG. The Department is making the decision as to whether or not it complies with the Federal law. If it doesn't comply with the Federal law there are remedies to correct that type of situation.

Senator LEVIN. So you have to give some guidance to your departments as to whether or not an application complies with Federal law. Is that not right?

Mr. STEINBERG. They have always had that problem. I don't think additional guidance is necessary to tell them how to determine whether or not something complies with the Federal law.

Senator LEVIN. Let's go back to your word directive. When will this directive be issued assuming that all 50 States have not acted to assure compliance through some kind of an areawide review mechanism? What is the timetable for your directive?

Mr. KELLY. The regulations on the books that implement that act will be rescinded with our April 30 implementation date. Any action that we would have to take would have to be taken by that time.

Senator LEVIN. By April 30?

Mr. KELLY. Yes, sir.

Senator LEVIN. So that if there is not compliance by 50 States on April 30 with the Model Cities law in this regard, we can expect a directive by that date? Is that a fair statement?

Mr. WRIGHT. Senator, I think what we are doing is getting off track a little bit. Executive Order 12372 is a formal process that we will take in terms of obtaining the views of the State and local governments. The requirements to meet the laws, whether it be Model Cities or any of the rest of these laws, will be there as they are today. Compliance with those laws by every one of these programs will continue to be reviewed through our normal evaluative process to make sure it does occur.

The fact that we have put in a new process for State and local government, presentation of their views will not change that one bit.

Senator LEVIN. Of course not. It is the compliance that will weaken.

Mr. WRIGHT. I don't believe it will weaken the compliance.

Senator LEVIN. It requires audits. Every single application has to be audited to determine whether or not in the judgment of somebody there is compliance with a Federal law requiring that areawide councils in these metropolitan areas be involved. You have to audit that individually. Instead of having a mechanism which you now have in place which takes care of that for you. You are saying that that compliance is just as clear and strong as having A–95 review process? I think you are trying to kid people.

Mr. **Wright**. I don't see why it would be any different. I look upon the Executive order process right now as an additional process to make sure that the State and local governments' views are heard and that the dispute level is taken from Federal hands and placed into State and local hands. Compliance with the law on these programs falls on the responsible parties, and that compliance is still going to be needed whether or not they decide to make it part of the Executive order process, or leave it under any existing review process.

Senator **Levin**. Except we now know clearly what constitutes compliance and by the time you are done it is going to be very unclear as to what constitutes compliance. I want to go back to Mr. Kelly because I want to make sure I understand the word "directive." You said if all 50 States have not incorporated a mechanism which complies with the amount of neighborhood staffing that you will then issue a directive of some kind? Whether it be regulation or Executive order, it would be a directive. My question to you is, when will that directive be issued? What is your timetable in the event that we have not achieved compliance by all 50 States?

Mr. **Kelly**. My initial answer of the April 30 time period stands. I think if it is necessary for us to remind our people on the basis of our analysis that the Model Cities—the Demonstration Cities and Metropolitan Development Act of 1966—is a requirement to be carried out. I don't believe that will take anything more than a memo from us to the people in all of the agencies for them to understand that nothing as a result of the rescissions of the A–95 regulations relieves them from the responsibilities under the Model Cities Act.

Senator **Levin**. Mr. Chairman, I have exceeded my time already. And I will not pursue this except to request Mr. Wright, Mr. Kelly, to submit to the subcommittee on April 30, your assessment of which States have achieved what you consider to be adequate continuing compliance with the Model Cities law, and which States have not. And will you send us a copy of the directive which you send out to the agencies on that date for our record?

Mr. **Wright**. Senator, we will be happy to.

[On April 8, 1983, President Reagan issued Executive Order 12416. This Executive order satisfied the concerns shared by members of the subcommittee regarding the regulatory compliance of the proposed rules with the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334).]

Federal Register
Vol. 48, No. 70
Monday, April 11, 1983

Presidential Documents

Title 3—

The President

Executive Order 12416 of April 8, 1983

Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to allow additional time for implementation by State, regional and local governments of new Federal regulations which foster an intergovernmental partnership and strengthened federalism, it is hereby ordered as follows:

Section 1. The preamble to Executive Order No. 12372 of July 14, 1982 is hereby amended by inserting, after the words "42 U.S.C. 4231(a))", the following phrase: ", Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334)".

Sec. 2. Section 5(b) of Executive Order No. 12372 is amended by deleting "April 30, 1983" and inserting in its place "September 30, 1983."

Sec. 3. Section 8 of Executive Order No. 12372 is amended by deleting "within two years" and inserting in its place "by September 30, 1984".

Ronald Reagan

THE WHITE HOUSE,
April 8, 1983.

[FR Doc. 83-9671
Filed 4-8-83; 12:03 pm]
Billing code 3195-01-M

Senator **Levin**. Thank you.

Senator **Durenberger**. I believe you are going to prepare for us a legal brief on whether or not these regulations satisfy the requirements of both the Intergovernmental Cooperation Act and the Demonstration Cities Act. Has that brief been prepared or submitted?

Mr. **Kelly**. It has not been submitted.

Mr. **Wright**. Yes, we will submit it.

Senator **Durenbeger**. I believe we made that same request of the Congressional Research Service as well. That will help shed light on some of these issues.

[Information submitted subsequent to the hearing follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 30 1983

Honorable David F. Durenberger
Chairman, Subcommittee on
Intergovernmental Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During his testimony before the Subcommittee on March 3, 1983, Joseph R. Wright, the Deputy Director of the Office of Management and Budget, agreed to provide the Subcommittee with a legal analysis of whether the proposed rules implementing E.O. 12372 met the intergovernmental consultation requirements of Section 401 of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act. The proposed rules had been concurrently published on January 24, 1983 by the federal agencies for public comment.

Following the Subcommittee hearing and after reviewing the public comments that were received, OMB and the federal agencies determined that changes to the proposed rules should be made. As a first step, the President on April 8, 1983 amended the Executive Order to include a specific citation of Section 204. The proposed rules were modified to incorporate additional provisions of Section 401. The provisions of Section 204 were also added to the rule when this section applied to the programs and activities of a particular federal agency.

It is our belief that the final rules fully reflect all statutory requirements imposed on the federal agencies by these two sections. We have discussed this result with members of your staff and we have mutually agreed that a legal analysis is no longer necessary. By separate mail, we are sending you a copy of the agency final rules which were published on June 24.

We appreciate your and the other Subcommittee members' interest in this intergovernmental initiative. Your suggestions and views were a major aid to the federal agencies in improving and refining the rules.

Sincerely,

Mike

Mike Hudson
Assistant Director
for Legislative Affairs

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 1 1983

Honorable Dave Durenberger
Chairman, Subcommittee on
Intergovernmental Relations
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Today, twenty-eight federal agencies issued final rules and notices to implement Executive Order 12372, "Intergovernmental Review of Federal Programs." This Order was signed by the President on July 14, 1982. The federal agencies have acted swiftly to put into effect this important element of Federalism. The Order is intended to give state and local officials greater opportunity to comment on federal actions affecting them, and increase federal agency responsiveness to their concerns. This Order and final agency rules implement both Section 401 of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act, as well as many other statutory consultation requirements.

This cooperative effort by OMB and the federal agencies has benefited greatly from the constructive participation of Members of Congress. Both OMB and the agencies received thoughtful views from Senators and Congressman during the public comment period, and the discussion and testimony during the Senate Intergovernmental Relations Subcommittee hearing on the proposed rules provided helpful suggestions.

We look forward to your continued interest over the next months as the rules take effect and the state and local processes are established that will implement the Order in their jurisdictions.

Thank you for your help.

Sincerely,

Joseph R. Wright, Jr.
Deputy Director

Senator **Durenberger**. Let me go to title IV of the Intergovernmental Cooperation Act. Carl made some mention of the requirement that agencies seek the views of State and local and areawide governments. It requires the President to promulgate regulations to make sure that that happens. Are you currently fully satisfied that those provisions of law are fulfilled by the regulations that you have written?

Mr. **Steinberg**. Yes, sir.

Senator **Durenberger**. You are satisfied?

Mr. **Wright**. Yes, sir.

Senator **Durenberger**. If you are, then you recall that the burden is on the Federal agencies, not on the States. Let's suppose a State decides that it is not going to design a comment process under the Executive order. Does that, in your view, absolve the Federal agency of its obligation to seek the views of the local government that might be affected by the grant?

Mr. **Wright**. No. It doesn't. I believe the Federal agency at that time still has the responsibility to seek their views under the current process, but not necessarily to accommodate or explain why they do not accommodate.

Senator **Durenberger**. Their views are going to be solicited?

Mr. **Wright**. Yes.

Senator **Durenberger**. There is in effect a requirement to solicit their views?

Mr. **Wright**. Under existing process. That is correct.

Senator **Durenberger**. I am informed that the regulations that will fulfill that requirement are being repealed as of April 30.

Mr. **Wright**. But you have within each program area responsibilities that vary all over the place in terms of what they have to do to get State and local government views.

Senator **Durenberger**. So we are going to find a different sort of process for review or accommodation of views in every single program?

Mr. **Wright**. It will be a specific process, that is right, between the Federal agency and State and local governments, if the States decide not to establish their process under the Executive order.

In addition, there will not be a requirement for the Federal agency to maintain records on nonaccommodations.

Senator **Durenberger**. Just for the sake of time, let me try to cover a number of the questions that have been raised by this. Let's suppose a more likely situation. Suppose the State does set up a process, but it decides that it is only interested in a relatively narrow range of projects. It doesn't want to know everything about everything. Is the Federal agency still required to seek the views of the affected local governments when it makes a grant that is not covered by the State review process?

Mr. **Wright**. Yes, sir. They are. If the State decides to do that, we feel like that is up to them to determine which programs and which process they want to use.

Mr. **Kelly**. If I could just add a word, in that specific case. What we provided for both in the Executive order and in the regulations is a very clear statement that the State has an opportunity to delegate to local governments the full review authority for certain programs that the State may choose not to be concerned about on a statewide basis, but to decide that these are the legitimate purview of local government or regional government. In such cases, the regulations and the Executive order provide a very clear opportunity as part of the development of the State process for the clear delegation of authority for the reviews of these programs to local governments.

In fact, we are already seeing, in the development of some of the States processes, a sorting out at the State level between those programs and activities that they feel they want the State to be involved in, and those that they feel they want to allow to be the purview of the local governments.

That delegation is being understood more and more as we talk with the State people. We are seeing this because of the manner in which we have required the State to notify us of both the establishment of their process and the selection of the programs. We have required States to actually come in with an assurance and say that local governments have been involved in designing the process and in the selection of the programs.

Most likely what will finally result is what we are beginning to see occur: that the involvement of local governments will be of help to the States in the sorting out process and in deciding which programs should be delegated to local governments for their review, rather than a State saying they just do not care about it at all. I think you will see a bilevel kind of system in most States that the State has endorsed and which will give the full weight of their single point of contact to comments when these are submitted through the contact.

Senator DURENBERGER. Let me try another example on you particularly with regard to the requirement to seek the views of all affected local and areawide governments. Let's suppose that the Defense Department decides to build in a suburb of Detroit a Carl Levin Pentagon, in honor of all of the work that he has done. [Laughter.] To bring tens of thousands of new jobs to some suburb of the city of Detroit.

What does the Defense Department do first? Does it contact the State single point of contact?

Mr. KELLY. The Defense Department has actually put in place rules for both the civil works as well as the military portion.

Senator DURENBERGER. Is this a real-life project here? I thought we were talking about a hypothetical. [Laughter.]

Senator LEVIN. That was not supposed to be disclosed. [Laughter.] It is called "pork."

Mr. KELLY. The existing memorandums of understanding that are in place between the Defense Department and local governments are being proposed to be part of the implementation of the Executive order that DOD will use. In some cases, those involved a contact and a notification with the State and in other cases they involve notification with a local government.

In more cases than not, it is the latter. In such cases, the State process would require that local official to go to the State single point of contact to determine whether or not the State wished to be involved in commenting on what might go on. From what I have been told around the country, including Michigan, there has been very wide acceptance of the use of these memorandums of understanding.

We have felt, as long as this is working well and as the local officials actually sign the joint memorandum of agreement with the Defense Department, that we could leave those in effect. So it is most likely that in that particular example, whatever the memorandum of agreement called for—whether it be to contact a local official or to contact a consortia in some way, or to contact the State official—that would be followed. That would be the first step.

Senator **Durenberger**. I am trying to explore this, then, from the established standpoint of some areawide accommodation of Government. I am not that familiar with Detroit. So I should have built myself a building in the Twin Cities. Let's suppose your memorandum, or whatever, requires the contact with the State or the single point of contact. The State just decides it does not want to bother to involve the areawide governmental process or the affected local governments. Does that mean that the legal burden to seek comment, which I thought was on the Defense Department, had been satisfied? They do not have to involve the local government?

Mr. **Wright**. No, Mr. Chairman. If the State would decide that they wouldn't want to include the local government in a situation like that, then it is the responsibility of the Federal agency to involve the local governments. In such a case, we would not abdicate the responsibility of the Federal Government in obtaining the comments from and giving notification to the local government.

Senator **Durenberger**. My time has expired. Carl, do you have additional questions?

Senator **Levin**. I gather we would look behind the certification that a State government—or behind a certification on an application for Federal funding that local governments have been involved.

Mr. **Wright**. Yes, sir. It would.

Senator **Levin**. We would make a determination as to whether that was true, whether or not it was adequate to meet Federal law in each case?

Mr. **Wright**. We are going to not only try to make that determination prior to the April 30 deadline, but within 18 months we are to submit a report.

I believe the report date is July 1984 and the report will examine whether the process is or is not working, and what corrections ought to be made.

Senator **Levin**. So we will be making in each case, in each State, a determination as to whether the process they select satisfies Federal law?

Mr. **Wright**. Yes, sir.

Senator **Levin**. You just described an 18-month operation.

Mr. **Wright**. Yes, the report is to be submitted July 1984.

Senator **Levin**. Then as to whether or not the process has been followed relative to a particular application, will that be checked out, too?

Mr. **Wright**. Yes, sir.

Senator **Levin**. So that a certification on an application, whatever process we approved has been followed, will not eliminate the issue?

You will check to make sure that the process that the State has adopted that we have approved in fact has been followed?

Is that accurate?

Mr. **Wright**. Senator, we are not going to be doing that in every single case, no.

Senator **Levin**. But if you were notified in any case that a process has not been followed, we would then check to see that that process has been followed?

Mr. **Wright**. Yes, sir, that is right.

Senator **Levin**. As to whether or not a process is adequate. Are we going to have any standards on that issue or make an ad hoc decision on each case?

Mr. **Wright**. We are going to have to establish some standards of what we consider acceptable performance of the process.

Senator **Levin**. Acceptable process?

Mr. **Wright**. Yes.

Senator **Levin**. Will you then send us a copy of your standards when you adopt them?

Mr. **Wright**. Sure. We would be more than happy to.

Senator **Levin**. Thank you.

Senator **Durenberger**. Thank you very much, Mr. Wright.

Mr. **Wright**. Thank you, Mr. Chairman, Mr. Levin.

[Mr. Wright's prepared statement follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FOR RELEASE ON DELIVERY
Expected at 9:30 a.m.
Thursday, March 3, 1983

STATEMENT OF JOSEPH R. WRIGHT, JR. DEPUTY DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET BEFORE THE SENATE SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS, COMMITTEE ON GOVERNMENTAL AFFAIRS ON E.O. 12372, INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

Good morning, Mr. Chairman, and members of the Subcommittee. I am pleased to be here today to discuss the intergovernmental consultation policies contained in Executive Order 12372, "Intergovernmental Review of Federal Programs," and to inform you of the progress in implementing these new policies.

Executive Order 12372 was signed by the President on July 14, 1982, to replace the federally prescribed process for state and local consultation required by OMB Circular A-95. Since that time, OMB and 29 federal agencies -- the 13 Cabinet Departments, the Corps of Engineers, and 15 independent agencies, including the Postal Service -- have been working cooperatively in the development of regulations to implement the Executive Order. I would like to describe this process in some detail, plus address some concerns I believe you have.

The Old System

Perhaps the best way to appreciate the Executive Order 12372 approach to intergovernmental consultation is to first view the A-95 approach. As you know, the A-95 system entailed the Federal Government:

-- Prescribing a review process that all state and local governments had to follow.

-- Picking the specific programs that would be subject to review.

-- Approving the specific substate entities which could review the federal programs.

-- Allowing each agency to promulgate inconsistent and highly prescriptive regulations.

-- Providing no authority for states to streamline federally-required state plans.

-- Often not responding to state and local recommendations.

Furthermore, several agencies did not have rules. This resulted in unpredictable intergovernmental consultation practices.

As I mentioned before this Subcommittee in April, 1982, our assessment of federal and state experience under OMB Circular A-95 clearly showed the need for change. From July 1981 to early 1982, we received over 120 unsolicited letters and more than 100 telephone calls from state and local officials, members of Congress, and others. This reinforced our decision to move away from a federally prescriptive system that had become a paper juggernaut and administrative nightmare at all levels of government.

Executive Order 12372

Executive Order 12373 is one of the fundamental components in the President's Federalism concept. The 1981 and 1982 block grants and the 1983 Federalism Initiative, transmitted to Congress last week, represent a process for returning certain responsibilities to state and local governments and letting them operate those programs with maximum feasible flexibility and simplicity. The Executive Order complements these initiatives by providing an opportunity for state and local officials to have more influence on federal financial assistance not returned to the states and direct development activities that affect the states. In addition, the Executive Order carries out the Administration's program of regulatory relief to state and local governments by removing unnecessary prescriptiveness and letting state and local officials design and operate -- without federal interference -- systems that are responsive to their priorities.

The approach embodied in the Executive Order is designed to be simple and straightforward. Basically, it requires that all agencies providing financial assistance or undertaking direct development projects: (1) "utilize" state designated processes to obtain state and local officials' views, (2) communicate with the state and local governments "as early . . . as is reasonably feasible" in the program planning cycle, (3) "make efforts to accommodate" recommendations of state and local elected officials formally submitted through the official process, (4) "explain" the basis for federal decisions in cases of nonaccommodation, and (5) "allow" states to simplify and consolidate federally-required state plans and potentially substitute their own processes.

Implementation of the New Policies

The government-wide implementation of the Executive Order has been unique. Let me explain it to you. In July, when the Order was signed, we established a task force of representatives from the 29 agencies that provide financial assistance to state and local governments or are involved in direct development activities. OMB chaired the task force. The first thing the task force did was to identify and resolve 31 policy issues, in order to provide a foundation for the proposed rules. These 31 issues, which were personally agreed to by the Deputy Secretaries of the Cabinet Departments and Deputy Agency Heads, were announced through a Notice of Availability in the Federal Register on December 23, 1982. This alerted state and local officials as to what to expect in the proposed regulations. It also gave them an opportunity to start planning early.

I would like to submit a copy of the 31 policies for the record. You will note that the policies address such matters as what the states have to do to participate in the process, the accommodate or explain requirement, a single point of contact concept, and an appropriate waiting period before federal action can be taken in cases of nonaccommodation.

On January 24, 1983, 26 federal agencies published, in the Federal Register for a 45 day public comment period, Notices of Proposed Rulemaking that were virtually identical in form and content. Two more -- HUD and TVA -- followed in the Federal Register after completion of congressional and other reviews. The Appalachian Regional Commission adopted the policies but uses its own Code to regulate. The regulations are quite brief -- only a page or a page and a half for each agency -- and they regulate federal actions, not the state and local governments. On the other hand, there are lengthy, fully explanatory preambles. Needless to say, this publication of nearly identical rules by 26 agencies in one place at one time is precedent-setting.

Neither OMB nor the agencies have yet to receive many public comments on the policies or the implementing regulations. However, state and local officials have told us, and agency experience indicates, that most written comments will be received during the last week of the comment period. As you know, we held a public meeting yesterday to provide an opportunity for oral comment on implementation of the Order and the proposed rules. The public comment period closes March 10, 1983. OMB has met with the agencies to develop a plan for fully considering all public comments in preparation of any needed policy changes and preparation of the preamble for the final rules. In accordance with the Order, the agencies are to adopt final rules on April 30, 1983, at which time existing A-95 regulations will be rescinded. So far, we are on schedule.

At about the same time as the NPRM was published, Director Stockman sent a letter to each Governor identifying three pieces of information which he needs to provide OMB in order to describe his official state process. The three pieces are: identity of the designated single point of contact, an assurance that local governments were consulted in the development process, and a listing of those federal programs and activities selected for inclusion in the state's process. As stated, this technique was formulated as one of the 31 policies.

Program Coverage

Program coverage has also changed from past A-95 experience. The Executive Order does not specifically exempt any federal programs or activities from state and local consultation. Indeed, we have attempted to include as many programs as possible, including expanding the number of direct development activities.

It is apparent, however, that for certain federal actions, consultation would be neither appropriate nor beneficial, e.g., procurement and contracting, classified national security programs, research programs of national scope. Accordingly, we worked with the agencies to establish a process for identifying and deciding those programs which should be excluded from coverage under the Executive Order. These programs are also the subject of public comment, and any comments received will be carefully considered.

Benefits of The New System

We believe the new system will provide many benefits for state and local governments. These benefits, grouped into three broad categories, are as follows.

-- Simplification

- An unwieldly process for intergovernmental consultation is corrected, as evidenced by an 82 percent reduction in regulations.
- A consistent, simple approach for federal responsiveness is provided and each federal agency must adhere to it.
- States have the opportunity to simplify and consolidate federally-required plans.

-- Responsiveness

  - Federal agencies are required to utilize the states' consultation process, unless precluded by existing federal statutes or regulations.
  - Federal agencies are required to make efforts to accommodate state and local concerns or explain why not.

-- Flexibility

  - Each state and its local governments are permitted to develop its own consultation process.
  - State and local elected officials can select federal programs and activities for review based on their priorities.
  - The only requirement on state and local governments is that they complete the review of proposed federal actions within a specified period (no less than 30 days) and transmit their official comments through a single point of contact.

Evolutionary Versus Revolutionary Change

We have been very diligent in our efforts to keep state and local officials informed about the status of federal implementation efforts. On at least six separate occasions since July, we sent information to them. This included early information on regulatory policies, programs, questions and answers, and other useful materials. I have a summary of the contents of these mailings for the record. We will make the materials available to your staff if you wish. In addition, we have published several notices in the Federal Register, including the availability of the 31 regulatory policies on December 23, the proposed rules on January 24, the OMB letter to the Governors on January 27, and the details of the public meeting on February 14.

Finally, OMB and the federal agencies are participating in meetings of state and local officials around the country. OMB and agency staff recently went to Denver, Colorado and Portland, Oregon to participate in multi-state meetings. Others are scheduled.

As expected, some states are moving more rapidly than others in deciding the kind of process they wish to adopt. The economy, budget deliberations, and elections all have had some influence on the priorities of state and local officials. Nonetheless, we are very encouraged by the acceptance of the policies by state and local officials. We did a telephone survey last week to determine what stage the states are in in designing their official state process. We talked with the state contact designated by the Governor. Preliminary indications are that 49 states plan to designate a process by April 30, 1983. In fact, two states -- Delaware and Hawaii -- apparently have already decided on their process.

Furthermore, we anticipate that the change will be evolutionary not revolutionary. The decisions taken by state and local officials by April 30, 1983, need not be final. We would be glad to share this preliminary information with you for the record, even though it is not conclusive.

Our information also confirms that state consultation with local officials in the design of a state consultation system and in the selection of programs to be covered by it is occurring. Forty-eight (48) states we contacted report active involvement by local officials. Maryland, for example, has an advisory group, has held meetings of state and local officials, and the legislature plans a hearing in the near future. Iowa has an active consultation process and has already conducted nine hearings across the state. Thirty-three (33) states report active consultations and involvement by areawide planning organizations. These are the kinds of discussions we encouraged and hoped would occur at the state and local level so that opportunities for improving intergovernmental consultation would be identified and then incorporated in the new official state process.

Agency Activities

The federal agencies are prepared to consider all views received during the public comment period. OMB is meeting weekly with representatives of the 29 agencies to encourage advance planning and coordination. Some specific activities include:

-- Dissemination of information and orientation on the Order for agency field and program staff. For example, the Postal Service has already trained one-third of its field managers.

-- Dissemination to state and local and agency officials of information on programs eligible for inclusion.

-- Provision of information to state and local governments, upon request, on existing statutory and regulatory consultation requirements that will continue.

-- Establishment of internal management procedures consistent with the Order and implementing regulations (i.e., changing program specific announcements to indicate that applicants should contact the state, etc.).

Single Point of Contact

I would like now to address the concept of a single point of contact, an important aspect of our approach. The single point of contact is the designated office or official who communicates the official views of elected officials on matters that are most important to the state and local governments. It should be realized that the single point of contact need not be the only channel for communications. Indeed, we fully expect the full range of communications will continue between federal officials and state and local officials, and actions will be taken as a result of these communications.

As stated, however, if comments are channeled through the single point of contact, the federal agencies will focus special attention and make serious effort to accommodate the views or explain why they cannot. This approach will stimulate the states to focus on the significant proposals and actions, minimize the likelihood that the state will present conflicting views, and ensure adequate federal consideration.

Legality of the Regulation

I understand another area of concern is whether there will still be adherence to the Intergovernmental Cooperation Act, the Demonstration Cities and Metropolitan Development Act, and other Federal statutes regarding specific requirements for consultation with state and local governments.

Let me assure you that these consultations will continue. The purpose of the Executive Order and the regulations is to establish a special process whereby state and local governments can take matters of specific concern, channel the comments through a specifically-designated office, and assure that there would be an accommodation or explanation.

Furthermore, the proposed agency rules to implement E.O. 12372 carry out the Intergovernmental Cooperation Act of 1968, Title IV provisions that speak to the issuance of regulations for ensuring that state and local viewpoints on Federal programs and projects are considered, to the extent possible. On the other hand, the Demonstration Cities and Metropolitan Development Act of 1966 only authorizes, but does not require, OMB or agencies designated by the President to prescribe rules and regulations that require federal agencies to consider comments and recommendations of metropolitan areawide planning agencies, where state or local governments have authorized and created these organizations. The policy of this Administration is that states, in concert with their local governments, are the best determinants of how to organize for the conduct of reviews of federal actions. Thus, it would be inappropriate for OMB or the agencies to single out a particular form of state or local government and prescribe a specific role for that form, or seek to obtain specific input from that form.

OMB Role

The last area of concern I want to address is OMB's oversight role. All agencies have agreed, as one of the 31 regulatory policy issues and decisions, to maintain records of all nonaccommodations. These records will be used by agency heads and OMB to assess success in implementation of the new policies. As you know, agency recordkeeping was not required under the A-95 system. OMB plans, however, to periodically review agency performance. Also, in eighteen months, we will thoroughly evaluate and analyze the effectiveness of the new policies by surveying state and local experience under the Order.

Questions have been raised about an expanded OMB role along the following lines:

(1) Providing a last resort for appeals in cases of nonaccommodation.

(2) Resolving internal state and local and interstate conflicts.

(3) Acting as a leader in intra-federal situations.

As a matter of Administration policy, we do not feel that OMB should assume responsibility for any of these roles. In the first, the waiting period before federal actions and involvement of senior agency officials up to the Secretary or agency head should suffice. For the second, this Administration believes that state and local officials should resolve their own conflicts without any federal interference. And, for the third, affected agencies can coordinate decisionmaking on specific direct federal development activities without OMB involvement.

Closing

Thank you for the opportunity to discuss this important intergovernmental initiative today. As with any new major policy change, there is always confusion, misinformation, and reluctance to change. You can be assured that OMB will continue to be sensitive -- and responsive -- to ways to improve intergovernmental relations.

Senator DURENBERGER. Our next witness, Mr. Robert Stone, will testify on behalf of the National Association of Regional Councils. He is a member of the City Council of Pittsburgh and the Southwest Pennsylvania Planning Commission. He is also the NARC second vice president.

I understand that with Bob today is Mr. John Bosley, the NARC's legal counsel.

Gentlemen, welcome.

Your statement will be made a part of the record. You may proceed to synopsize or abbreviate it or do as you please.

TESTIMONY OF ROBERT RADE STONE, COUNCILMAN, PITTSBURGH, PA., AND MEMBER, SOUTHWEST PENNSYLVANIA PLANNING COMMISSION, ON BEHALF OF THE NATIONAL ASSOCIATION OF REGIONAL COUNCILS, ACCOMPANIED BY JOHN BOSLEY, LEGAL COUNSEL, NATIONAL ASSOCIATION OF REGIONAL COUNCILS

Mr. STONE. My name is Robert Rade Stone, Mr. Chairman. I am vice president of the National Association of Regional Councils and locally I serve on the Pittsburgh City Council and I am a member of the Southwestern Pennsylvania Regional Planning Commission.

As you have indicated, John Bosley, our legal counsel, is with me today.

NARC appreciates your continued interest in the implementation of the Executive order and the opportunity to testify before this subcommittee. That is the reason we are presenting our testimony here today and I will attempt to summarize the key points.

The A-95 coordination process terminated by the order was a widely used opportunity to harmonize related public decisions on investments. Virtually all of NARC's 350 members were designated by their Governors as the so-called A-95 clearinghouse agency under the old circular. Our interest is the nature and the quality of the successor coordination system proposed under the Executive order and to see that it is successful.

At your 1982 hearing, we stated our concerns about the OMB scheme under which the A-95 process would be replaced. At that time we suggested changes. And we strongly supported the elements of that proposal which would strengthen Federal agencies' adherence to the recommendations of the State, regional, and local governments on proposed Federal assistance programs.

Our main reservations were objections to a preempted State role, to the extent that the State would be the final arbiter of whether, and to what extent, local governments and their regional agencies would be involved in the new coordination process.

This part of the proposal is in conflict with the main intent of Congress as represented in the Intergovernmental Cooperation Act.

Second, we expressed concern about the primacy to be given to State recommendations to the Federal Government under the new system.

Unfortunately, OMB has not modified that position. Neither the Executive order nor its implementing regulations proposing the new coordination system adequately address these problems.

Let me interject, Mr. Chairman, that NARC has not been completely resistant to accommodating the proposed OMB changes. We advised our members, if possible, to make their interests represented in those involving new State coordination processes. But these efforts have only been partially successful. Now it is clear that many of the concerns we raised initially are no longer conjectural. They are real. Therefore, we must reiterate the legal and the practical deficiencies in both the Executive order and the proposed Federal agency implementing regulations issued on January 24. Unless there is modification in the proposed regulations, we believe the guaranteed access and status accorded to local governments and regional councils in the federally mandated intergovernmental coordination process will be lost. In short, the new coordination proposal conflicts with congressional policy. It does not adequately implement the Intergovernmental Cooperation Act of 1968, which requires this Presidentially initiated coordination process. But the Executive order, notwithstanding its failings, could be rectified in the proposed OMB-coordinated implementing regulations.

Presently, however, these regulations further thwart the act. The proposed regulations are similar in all respects. They call for the establishment in each State of a single point of contact through which a single State recommendation shall be made on Federal actions within the State. If the State voluntarily meets these conditions, the Federal Government will accommodate, to the degree practical, those recommendations.

While the local officials must be consulted on the establishment of a State system, local governments and their regional agencies are not assured participation in the State system. Even if they participate, their viewpoints can be modified or even surpassed under the authority vested in the State by the order, and the regulations.

Federal agencies will read and consider the local regional comments that are not presented through the new coordination system, but they will not be given the same status. It is clear that in the latter case such views have an inferior status. A Federal agency has no obligation to make an accommodation effort to the extent required under a State coordination arrangement that complies with the proposed regulations.

NARC believes that this approach is a constrained interpretation and attempts to implement only section 401(a) of the ICA. OMB has ignored substantive provisions in the remainder of section 401 and title IV of the statute. This approach justifies the exclusion from the new process of the mandatory participation of local government and their regional planning organizations, and the provisions that Federal agencies' actions shall, to the maximum degree possible, act consistent with the State regional comprehensive planning. According to the OMB's coordinated Federal agency regulations, consideration would be given to those other parts of the act but such consideration is not used in administering the new coordination arrangement and its requirements to accommodate the recommendations of State and local officials. This leads to one conclusion: Views and recommendations are to be given greater weight under a State sanction coordination program than recommendations received by a Federal agency from a regional agency or local government that has not proceeded under a coordination system.

This approach is clearly wrong: wrong because it frustrates a congressional policy in the Intergovernmental Cooperation Act; wrong because it creates confusion rather than certainty as to the obligations of the Federal Government in coordinating with State, regional and local governments; and wrong because it complicates, rather than simplifies the coordination system it attempts to replace. It ignores 204 of the Demonstration Cities and Metropolitan Development Act as well as title IV.

Relative to this matter, I would like to conclude with this, if I may. We believe it is still possible for the proposed implementing regulations to bring the proposed new process into compliance with the intent and purpose of the intergovernmental laws. First, we believe OMB should commit to implement all of title IV of the Intergovernmental Cooperation Act and section 204 of the Metropolitan Development Act in implementing the regulations. They should provide for local option in those States that do not participate in the system. They should assure that all views are provided for in the event of State and local impasse. And most importantly, they should require that the parties frame their recommendations on the basis of established public policies.

Next, since the regulations were just promulgated on January 24, there is now a rush to judgment to meet the April 30 date and those substantive efforts have been made by the State prior to January regulations.

Orderly and rational decisions can only be made with the offering of substantial revisions in those regulations and an addition of more time to respond to them. OMB would like to send the A–95 phaseout until October. Of course, States should be given additional time to respond to the revised regulations.

Senator DURENBERGER. Let me deal, first, with the issue of rushing to judgment because we hear that a lot.

If my question sounds contentious, it is not. But it seems to me that neither this new administration nor its Office of Management and Budget can be accused of inventing complaints about the A–95 review process out of thin air. I think the complaints have existed in one way or another for a substantial period of time. I also think that we have known since at least September 1981 that changes in A–95 were coming.

Now, we are 60 days from the deadline. The evidence that this subcommittee has been able to generate—and I think it includes part of your testimony—is that the States just haven't done much to move this whole process. Your testimony is that we should have an extension until October and you seem to be using the January 24 promulgation date as a rationale, and frankly it isn't selling.

I might suggest that there just isn't much interest.

Do you want to refute that for me?

Mr. STONE. First of all, I think we have a Federal mandated process, and, second, to put in a new system where all of the participants are not ready to participate would be folly, to destroy that which you had without having an adequate substitute.

It would appear to me either we modify the A–95 system so that it can better carry out the intent of the Federal coordination laws, or at least we not move into a new system without knowing where we are going.

My own State of Pennsylvania indicated initially that they would do nothing. As of 2 weeks ago, someone woke up and now they indicate they might be involved. To this point, no one has declared what we are doing, where we are going, and how a new coordination system will be implemented. The timeframe is such that it is not likely that there will be anything specific done in the foreseeable future.

Senator **DURENBERGER.** Without trying to fix blame for that process—and I think that is a very honest, forthright statement—the treadline has been there for a couple of years. You heard OMB testify to the fact that this is part of the "Federal system," and without getting into trying to define what New Federalism is, we sure know that part of it is additional strength in State government.

If you recall our hearing 1 year ago and you watched this process over 1½ years, it seems pretty clear the direction we've been going. But the evidence seems to be that we did not get a lot of reaction from anybody. I know that isn't uniformly true. But it is difficult to know where the problem might lie.

For example, I was asking questions about the role of the State in a single-point-of-contact process. I was curious as to whether or not the States have simply figured that everything is moving in their direction, anyway, utilizing the single point of contact. If you were a local government official, elected official, how would you like to go into negotiations where all of the authority to draft the final agreement and what went into that agreement was on the other side of the table, namely the States.

Now is there some evidence, in your judgment, that the States know what is coming and they are just sort of stifling the process; that the concerns about changing A–95 or improving A–95 do exist at the local government level but that they don't exist at the State level and, therefore, it is there that we are going to have problems in implementation of the review process?

Mr. **STONE.** Some States were previously. I think you will find many States already participate in the program even as a State initiative.

Some have not participated at all, as my own State of Pennsylvania. As I have indicated, they have not acted yet and they are kind of late on that subject. But I cannot overemphasize the importance of having the input of local and regional councils involved for the reasons that our particular council, the Southwest Regional Planning Commission, orders all political alliance and much like the Federal Government, much like the State, our region has everything.

It has the big city, the urban, the suburban, it has the nonurban, it has the rural. We have it all and, obviously, trying to find one uniform rule for the needs of those who are involved.

From some of our highway programs, I have notice as of this past Monday at our meeting; that is, where the local regional council has been asked to determine its highway needs.

After having done that, after a great deal of horse trading between all of us as to what is best for the region, for the local governments, then to have the State veto that unilaterally and put some program in front of it, in our region.

I think the concerns here are substantive and should be addressed, frankly.

Senator **Durenberger**. I wonder if either of you or Mr. Bosley were here earlier when I asked the question of OMB, which related to a possible substitute for the single point of contact. We would have everyone comment as they now do, and all comments would be accommodated unless there were a conflict. If there were a conflict apparent in the comments OMB or the agency would add 30 additional days for resolution of those conflicts. If there was no resolution, then, the agency could go off and do as it pleased without being required to accommodate under the law.

Do you agree? Do you have any reaction to that proposal?

Mr. **Bosley**. Yes; I think that would be a distinct improvement of what is being proposed here today, Mr. Chairman, with one reservation. I don't think the Federal agencies should ever be put in the position of making the decision without local voices being considered. It seems to me, rather than do that, the situation would probably be best reconciled at the State and local level.

The Federal agency would be responsible to find out who was the final decision authority in that particular circumstance and give credence to those governmental agencies' proposed recommendations on the project.

I think this would not be overbearing on the Federal agency. It simply recognizes that under State law, local governments, and regional entities and States themselves are delegated decision authority on many of these Federal programs.

The level where the final decision is made would be one that is respected as the final comment.

Senator **Durenberger**. I have one problem, myself, with the suggestion. For example, in a State like Illinois, if the politicians in Chicago thought they had particular clout, they could just avoid the process—stiffing the whole process, if you will—figuring they had enough political clout with the agency so that they could go around the review process, which is designed to accommodate the interests of Illinois as well as the interests of Chicago. You might find that same situation in an area like Philadelphia.

Let me ask another question that goes to what it is that makes A–95 work or not work. I don't think the failure of A–95, where it hasn't worked, has been because it was necessarily poorly designed. There are metropolitan areas where it has worked pretty, well. But it has been a program run by people, and in some places not enough people or financial resources have been provided so that the people could do a good job. That applies not only to the State and local officials, but also to the Federal agency officials that were involved.

Has NARC done anything at all to identify Federal officers or Federal offices that did a lousy job under A–95?

Mr. **Bosley**. We have from time to time, Mr. Chairman, had complaints which usually are centered around Federal Departments that ordinarily are not providing funding for specific types of development projects but rather are funding services. So our complaints usually come about entities like HHS and other agencies which are service oriented.

In those instances, often times we will find that the local government officials feel that those agencies have not been responsive in the comments they have made on those kinds of projects.

Senator DURENBERGER. On another subject, OMB says section 204 of the Demonstration Cities Act only authorizes but does not require the consultation process.

Do you agree with that legal interpretation?

Mr. BOSLEY. No. I think it is clearly wrong. In my mind, the provisions in that section of the law require that there be accommodation of whatever recommendations are made by areawide agencies, if the agency shows that the project has been consistent with a policy or plan that is developed in the region.

Section 204 doesn't require implementing regulations, though it clearly indicates that it would be helpful if the Federal Government issue such regulations in implementation of that section. But it does not require that such regulations be issued by OMB or anybody else. The law itself is self-executing, however, and I think it is applicable to Federal funding agencies without implementing regulations.

That brings us to the dilemma we find in the proposal at hand. We know that Federal agencies will have to give some status to this particular requirement in a Demonstration Cities Act. At the same time, it is going to be asking for other viewpoints which could be, as you indicated in your hypothetical, conflicting with the local governments or a regional agency's point of view.

At the same time, that State process is generating a single view that must be accommodated. There is obviously conflict here. How that conflict is going to be reconciled, I think, is going to be difficult. It will only be ascertained from case to case. But it seems to me there is great uncertainty in this situation. Before the attempt at OMB to replace the whole A–95 process, there was an attempt to harmonize both of the provisions in the Intergovernmental Act and the Demonstration Cities Act.

This new approach severs that connection and in doing so, I think it will present a very significant dilemma for the Federal agency as well as for local and State people.

It will get us into the problem of some people making arguments as to whether this accommodation requirement is a condition under Federal grant law that will allow the Federal Government to put a condition on a Federal grant which may be inconsistent with the way that the State and local governments are operating under their own organic legislation.

If that happens, I think we are going to find a great deal of delay, a great deal of turmoil in the whole system.

Senator DURENBERGER. Does NARC contemplate testing the legal sufficiency of this order in the near future?

Mr. BOSLEY. Mr. Chairman, our board of directors has considered that over the last 1 or 1½ years, since the proposal was first broached.

I will ask Mr. Stone to take it from there. But as I remember, the last action taken at our recent Federal briefing was that our executive committee, on which Mr. Stone serves with our other officers, was given the authority to take such action if it finds that the States are not responding to the regulations in a way that will accommodate the vital interests of their regional councils and the local governments that they represent.

Senator Durenberger. Do you want to add to that, Mr. Stone?

Mr. Stone. Just this point, if I may.

I think we are not happy about facing the potential lawsuit. That is why we are here.

Senator Durenberger. Do either of you have any other specific replies you want to make to the statements made by OMB this morning?

Mr. Bosley. Mr. Chairman, I think Mr. Stone's statement stands on its own. I didn't hear anything myself that persuaded me that the logic that was used or the legal interpretations that were apparently given to the various general coordination statutes, which we continue to discuss before you today, have in any way been interpreted in a manner to reflect the congressional intent depicted in those enactments as they were passed back in 1968 and 1966.

Rather than finding a way or trying to reconcile any potential administrative inconvenience in construing both of those sections—401 and 204—together to make sure that they become a compatible coordination process, OMB has taken a narrow viewpoint which, I think, will lead to a great deal of unnecessary conflict and will not improve the process as they anticipate.

Mr. Stone. A–95 set out some specifics and we would like to support and keep those things which work. We have had the opportunity to place it into operation in my Southwestern Regional Planning Commission, and it appears to us that it is workable.

It has gotten past the political lines. It has gotten past the local self interests. We have been able to horse trade in the best interests of all concerned.

We feel that if it goes to the State, it may end up bringing too much politics back into it; that the State's perceived interests are being accommodated rather than our interest being accommodated. They're creating conflicts which heretofore we have not had.

In addition to that, it might reactivate the selfish interests, particularly in this period of fiscal constraints. I think we can be better served by maintaining that existing process.

Senator Durenberger. Thank you, Mr. Stone, Mr. Bosley.

We appreciate your testimony.

[Mr. Stone's prepared statement with attachments follow:]

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RICHARD C. HARTMAN, Executive Director

STATEMENT OF

ROBERT RADE STONE

Councilman, City of Pittsburgh, Pennsylvania
Member, Southwestern Pennsylvania Regional Planning Commission
Second Vice President, National Association of Regional Councils

ON BEHALF OF THE
NATIONAL ASSOCIATION OF REGIONAL COUNCILS
BEFORE THE

SENATE GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

ON

INTERGOVERNMENTAL COORDINATION PROCESS UNDER E.O. 12372

March 3, 1983
Washington, D.C.

Mr. Chairman, my name is Robert Rade Stone. I am a Vice President of the National Association of Regional Councils (NARC). Locally, I serve on the Pittsburgh City Council and as a member of the Southwestern Pennsylvania Regional Planning Commission.

Mr. Chairman, I want to start by expressing our appreciation for this opportunity to give your Subcommittee our views on the implementation of Presidential Executive Order No. 12372. This is an extremely important issue to our members. The A-95 coordination process terminated by the Order was a widely used opportunity to harmonize related public decisions and investments. It had its weaknesses, but was found to be a valued tool for furthering intergovernmental cooperation. Virtually, all of NARC's 350 members were designated by their Governors as the so-called A-95 clearinghouse agency under the old circular; our interest in the nature and quality of the successor coordination system proposed under the Executive Order is substantial. We are encouraged by your continued interests -- evidenced by this second hearing on the question -- to ensure the new coordination arrangement is sensitive to the Congressional policies that require this intergovernmental cooperation effort.

At your previous hearings, we stated our concerns about the proposed OMB scheme under which the A-95 process would be replaced. We suggested changes. But at the same time we strongly supported the elements of the proposal that would strengthen federal agency adherence to the recommendations of State, regional and local governments on proposed federal assistance projects.

Our main reservations were twofold: we objected to the pre-eminent state role. To the extent it was the final arbiter of whether and to what degree local governments and their regional agencies could be involved in the new coordination process, the proposal was in conflict with the plain interest of Congress as represented in the Intergovernmental Cooperation Act (ICA). The other problem related to the primacy to be given to state recommendations made to the federal government under the new system. They were to be provided the option to supercede local and regional views in commenting on proposed federal actions.

Unfortunately, OMB has not modified its position. Neither the Executive Order nor its implementing regulations proposing the new coordination system adequately address these problems.

I must hasten to add, Mr. Chairman, NARC has not been completely resistant to accommodating these proposed OMB changes. We asked our members, if possible, to have their interests represented in these evolving new state coordination processes. Our members are trying to work cooperatively in state efforts to establish coordination arrangements under the Executive Order. NARC is trying to do its share; we have prepared guidance documents, including model legislation to assist regional councils to have their interests protected in these efforts. Copies of these documents are attached to my statement.

These efforts have been only partially successful, however. A recent survey of NARC members indicates that at least one state

(Idaho) is not presently planning to develop a coordination process to replace the A-95 system, while most states are undecided. In several states there is disquieting news; regional councils and local governments may not be given substantive roles in the emerging state coordination arrangements.

The problems initially raised are no longer conjectural; they are real. We must reiterate the legal and practical deficienies in both the Executive Order and the proposed federal agency implementing regulations issued on January 24. Unless there is modification in the proposed regulations, we believe the guaranteed access and status accorded to local government and regional councils in the federally mandated intergovernmental coordination process will be lost.

The New Coordination Proposal Conflicts with Congressional Policy

Executive Order No. 12372 does not adequately carry out the Congressional interest and purpose of the Intergovernmental Cooperation Act of 1968 that requires this presidentially initiated coordination process. This is not a congenital defect, however. The Order is general in its terms; its failing can be rectified in the proposed OMB coordinated implementing regulations, but instead these regulations further thwart the Act.

The proposed regulations are similar in all material respects. They call for the establishment in each state of a "single point of contact" through which a single state recommendation shall be made on federal actions within the state. If the state voluntarily meets these conditions, the federal government will "accommodate" to the degree practicable the recommendation. And while local officials must be consulted on the establishment of the state system, local governments and their regional agencies are not assured participation in the state system. Moreover, even if they participate, their viewpoint can be modified or surpressed under the authority vested in the State by the Order and the regulations. It is noted, however, that federal agencies will read and consider local and regional comments that are not presented through the new coordination system, but they will not be given the same status. Rather, it is made explicit that in the latter case such views have an inferior status, and a federal agency has no obligation to make an "accommodation" effort to the extent required under a state coodination arrangement that complies with the proposed regulations.

NARC believes this approach is a constrained interpretation of the Intergovernmental Cooperation Act that attempts to implement only Section 401(a) of the Act. In doing so, OMB has ignored the substantive provisions contained in the other portion of Section 401 and Title IV of the Statute.

This approach justifies, among other things, the exclusion from the proposed new coordination process of the mandatory participation of local government and their regional planning organizations, and the provision that federal agency actions shall, to the maximum degree possible, act consistently with State, regional and local comprehensive planning. According to the OMB coordinated federal agency regulations, consideration will be given to those other parts of the Act, but such considerations are not used in administering the new coordination arrangement and its requirement to accommodate the recommendations of State and local officials. This leads to one conclusion: State and local government interests are to be given greater weight under a state sanctioned coordination program than those recommendations received by a federal agency from a State, regional agency, or local government that is not proceeding under such a coordination system.

This approach is clearly wrong. Wrong because it frustrates a Congressional policy in the Intergovernmental Cooperation Act. Wrong because it creates confusion rather than certainty as to the obligations of the federal government in coordinating with State, regional and local governments. And wrong because it complicates rather than simplifies the coordination system it attempts to replace.

The pending agency regulations should be redrafted to reflect all of the operative provisions of Title IV of the Act. The regulation that must be issued under Sections 401(a) and 403 must address the coordination requirement on the whole of Title IV; this is a basic rubric of statutory construction and there is no basis for deviation from the norm in this case.

Other General Federal Coordination Mandates Are Abandoned

The A-95 process has its limitations. It needs improvement. But one of its saving features is that it harmonizes the two general coordination policies of Congress in one unified process. Section 204 of the Demonstration Cities and Metropolitan Development Act is a general coordination requirement that preceded Title IV and applies strictly to providing assistance within the 237 metropolitan areas in the country. It is self-executing and requires that federal grant applicants in such areas have their funding proposals reviewed by metropolitan planning organizations to determine if they are consistent with development planning for the area. Projects in any of seven function areas, for example, housing or a transportation project, must have this review as a credential for funding eligibility.

But under the proposed new coordination system, there is no reference to Section 204; it appears to have disappeared from our public laws. Probably because it -- as the forgotten Sections of Title IV of the Intergovernmental Cooperation Act -- reflects substantive performance conditions imposed by Congress to provide a rational policy framework for an intergovernmental coordination system. Conditions and policy inconveniently do not fit within the framework of the proposed new OMB model. Therefore, everyone will be left to their own peril or to whether these conditions are met.

Will these uncertainties give us regulatory reform and simplification in the coordination process? We do not believe so, Mr. Chairman. Rather, NARC believes this is a blueprint for uncertainty and chaos.

Other Considerations

Our purpose today is not to provide the Subcommittee with a litany of problems with the OMB proposal. But since we believe it can be saved even at this late date, we will list a few other problems that must be fixed if it is to succeed.

Interstate Coordination. The proposed regulations address this vital question, but only modestly. Federal agencies must seek out views of the states when federal action will impact within those states' areas. Significantly, this responsibility and the concomitant one of "accommodating" the states views apparently applies even without the states having a OMB sanctioned coordination system. Ironically, this is one of the few times where the federal position on interstate matters is an improvement over federal treatment of intrastate areas -- at least on the procedural question. But we need even more federal direction on coordination in these unique regions. Federal regulations must guarantee participation of the areas' local governments and provide the policy framework called for in Title IV as the context for developing unified policies for interstate development aided and assisted by the federal government.

Environmental Impact Statements. The National Environmental Policy Act envisions State, regional and local reviews of emerging federal impact statements. This is provided currently under the A-95 process. It should be retained in the new process. If it is not, a parellel review procedure will have to be erected to provide this opportunity. Again, it will complicate rather than simplify life for all parties in interest.

Deletion of Federal Program and Actions. In conflict with the express intent of the Executive Order, the implementing regulations give each federal agency the right to exclude certain federal actions from the coordination requirements. This is done without any standards for making such decisions. Section 401(a) provides that proposals "having significant impact on the area and its community development" must be covered by the regulations. In our opinion, exclusion should be based only on this test and the federal agency should have to justify that this standard is the sole basis for exclusion.

Recommendation

As we have indicated, we firmly believe the proposed implementing regulations can bring the proposed new process into compliance with the intent and purpose of the intergovernmental laws cited above. But to achieve this result, NARC believes the following steps must be taken:

1. OMB should commit to implementing all of Title IV of the Intergovernmental Cooperation Act and Section 204 of the Metropolitan Development Act in the implementing regulations. This would provide for local option in those states that do not participate in the new system. It would assure that "all views" is provided in the event of a state/local impasse, and most importantly, it would require the parties to frame their

recommendations on the basis of established public policies as reflected in their development planning process.

2. To achieve the above, we need more time. The agency regulations were not issued until January 24. There is now a rush to judgment to meet the April 30 deadline. No substantial efforts have been made by the state prior to the January regulation. Orderly and rational decision can only be made with the offering of substantial revision in these regulations and addition of more time to responding to them. We urge OMB to extend the A-95 phase out until October. Of course, states would be given additional time to respond to the revised regulations.

In closing, Mr. Chairman, we want to thank you for your interest on this important subject. This is an esoteric subject, but at the same time intergovernmental coordination is the acid test of our commitment to cooperative federalism. We must have a high quality federal coordination system to drive us to these more effective coordination actions at all levels of government.

I will try to answer any questions you have on this statement.

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RICHARD C HARTMAN, Executive Director

GUIDE TO STATE LEGISLATION ON INTERGOVERNMENTAL COORDINATION AND FISCAL IMPACT EVALUATION

Preface

This guide legislation has been prepared to complement previous NARC papers on establishing principles and guide procedures to converting from the A-95 coordination system to a new system engendered under Presidential Executive Order 12372 (EO).

This proposal would establish a statutory basis for a new coordination system. While our recommendations are based on NARC policies on the preferred institutional and process arrangement governing the parties in the intergovernmental system, the proposed legislation, in our judgement, also is compatible with the provisions in the EO. But the guide contains several optional features. These options are not derived necessarily from NARC policies. Rather, they are based on some of the needs to fulfill several of the institutional models for regional councils developed by the EDAC several years ago.

The option envisions a situation where the fiscal and political environment has evolved to the point where a regional council can effectively address issues and proposals of a substate character on a regional governance basis. In the main, the suggested approach is to require regional concurrence on all projects or programs that are regional in character or have intergovernmental significance. Moreover, projects fitting into such classifications also would be reviewed from a fiscal impact basis. No approval or concurrence authority would vest in the regional council in this respect. Instead, the optional review would simply evaluate whether the project was the most cost-effective alternative.

A BILL

To promote coordination and cooperation in community development in substate metropolitan and rural regions within the State; to provide a coordination process to ensure that federal, state, regional and local public investment decisions conform to any adopted state, regional and local community development objectives and policies; to encourage that state, regional and local public investment decisions and public services programs are provided, to the maximum degree practical, on the most cost efficient basis.

Section 1.

This act may be cited as the "The Intergovernmental Coordination and Fiscal Impact Analysis Act."

Declaration of Purposes and Policy

Section 2.

(a) It is the purpose of this Act to promote more harmonious intergovernmental relations among Federal, State, regional and local governmental units, and to provide for an intergovernmental coordination system that promotes consistent State, regional and local community development objectives, policies and priorities, encourages sound public investment decisions for the provision of necessary public services and facilities on the most cost efficient manner possible consistent with other established state and community development goals, objectives and values.

(b) The General Assembly declares that:

(1) in furtherance of the state's commitment to local and regional home-rule, community development decisions should be made by local elected officials of general purpose governments within a framework of state development policies on matter of compelling statewide concern;

(2) a continuous dialogue among elected and policy officials of State, regional and local governmental units in community development matters will enhance the quality of public decision-making on community development issues and will provide greater opportunity to pursue common goals and objectives and reconcile conflicts among the interests of governmental units at all levels of the intermental system;

(3) an intergovernmental cooperation and coordination system based on a process to ensure the review, comment, and, in appropriate cases, approval of application for federal and state assistance programs and direct federal and state action affecting community development will encourage the wise expenditure of federal and state development assistance funds and prudent choices on federal and state developmental decisions that impact community development and the quality of life in the states, local and regional communities; and

(4) the expenditures for community development projects and public service activities wholly or partially financed with federal and state funds should be accomplished to the maximum degree practical consonant with other established state, regional and local goals, objectives and values, on the most feasible cost efficient basis.

State Coordination Unit

Section 3.

The Governor shall establish a State Intergovernmental Coordination Unit within the Executive Office or other appropriate State department or agency. The Unit shall administer the intergovernmental coordination system established in this Act. It shall have a director who shall be appointed by and serve at the pleasure of the Governor. The Unit shall have such other employees that are deemed necessary for the efficient and effective operation of such coordination system as authorized in the annual budget approved by the General Assembly.

Intergovernmental Coordination Advisory Commission

Section 4.

(a) The Governor shall appoint an intergovernmental coordination advisory committee composed of members. At least a majority of the members of the Advisory Committee shall be selected by the Governor from nominees proposed by substate regional councils, the state municipal league, the association of counties, and other local elected officials nominated by individual general purpose local governments. The committee responsibilities shall include the joint determination with the Governor of the federal and state programs and activities that shall be subject to the coordination system established under the Act, the formulation of recommendations, policies, programs and priorities for community development and preservation programs, and the improvement of the intergovernmental coordination system established under the Act.

(b) Local elected officials appointed to the Advisory Committee shall be appointed for __ year terms unless they leave local elected office, in which case they shall be replaced with another local elected official. All other members of the Advisory Committee shall serve at the pleasure of the Governor.

Coordination of Federal and State Assistance Programs and Development Activities

Section 5.

(a) All proposed State or federal assistance projects and programs or direct State or federal development systems selected for review under Section 4(a) shall be submitted to the State Intergovernmental Coordination Unit and the appropriate substate regional council. Within ten days from the date of the submission of the proposal, the substate regional council shall advise the State Intergovernmental Coordination Unit and the State or local applicant whether the proposal is of regionwide or intergovernmental significance. Within (30) days of such notification, the substate regional council shall review the proposal to determine either, in the case of a proposal with regionwide significance, whether it conflicts with any adopted regional community development policy or program or in the case of a proposal of intergovernmental significance, whether the proposal conflicts with adopted local community development plan or program. Concurrent with the substate regional review, the State Coordination Unit shall submit the proposal to any state agency it determines has an interest in the proposal. Any such state agency review shall be accomplished within (30) days from date of the referral and shall be for the sole purpose of whether the proposal conflicts with any statutorily authorized state policy or program which pre-empts the authority of any political subdivision of the State.

Unless within the period provided for review there is a finding of conflict, the State Coordination Unit shall indicate the state's endorsement of the proposal and submit it to the applicable State or federal agency for funding or other appropriate action. Proposals found in conflict with adopted State, regional and local community development policies, plans or programs shall not be resubmitted unless they are amended to avoid such conflict or where the Governor has determined that the finding of conflict was clearly erroneous.

(b) To encourage orderly and coordinated community development at all levels, any State, regional and local unit of government may submit its annual capital improvement program to the State Intergovernmental Coordination Unit and appropriate substate regional council for review. Upon the finding that the capital improvement program does not conflict with any applicable State, regional or local community development policies, plans or programs, a specific project or capital program that substantially conforms to the previously submitted capital program may be submitted without further review to the appropriate state or federal funding agency without further endorsement.

Analysis of Cost Effectiveness

Section 6.

To encourage the selection of the most feasible, cost efficient alternative for community development projects and programs, any application for State and federal assistance selected for review under Section 4(a) of the Act shall contain an analysis of the relative costs of the alternatives for attaining the objects to be met by the State or federal assistance project or program. The analysis shall demonstrate that the selected alternative in the proposal is the most cost effective approach consonant with other established state, regional and local community development goals, objectives and priorities.

Interstate Metropolitan Areas

Section 7.

Any interstate metropolitan area having a portion of its boundaries within the state shall be considered a single unified substate region for the purposes of the Act. Any existing interstate regional council functioning in such area and having been designated as an areawide clearinghouse under the U.S. Office of Management and Budget Circular A-95 shall be responsible for the regional council coordination activities provided under the Act.

Guide State Coordination Process

I. Principles Governing State Coordination Process

Introduction

The purpose of this paper is to set forth guiding principles for developing a state coordination system under E.O. 12372. Our proposal is divided into two parts. The first suggests principles under which this system should operate, and the second proposes a schematic of how the process would work.

II. Coordination Principles for State Process

(1) Comprehensive State Coordination Center - This would be the single unit for communicating the comments and recommendations of all parties to the federal government. It would be strictly an administrative unit; it would be a one stop communications center on all federal assistance and direct development proposals in the state. But the unit would not be authorized to amend or alter any review comments or recommendations. Instead, the unit would simply be the central clearinghouse for transmitting the views of all the parties to the system. All relevant proposals affecting local governments or regional interests would be filtered through designated regional councils.

(2) Parties to the State Coordination Process - The following units of government would be guaranteed the opportunity to review and make recommendations on federal grants and direct development proposals:

(a) all general purpose local governments;

(b) general purpose regional agencies established under state law, interlocal and joint powers agreements, and interstate agencies of local governments;

(c) state agencies vested under state law with advisory or final decision-making power on federal programs, projects, plans and direct development actions;

(d) local and regional functional or special district agencies views could, at the option of the general purpose local or regional unit, be incorporated into the comments of such unit.

(3) Authority and Responsibilities of State, Regional and Local Parties in State Process - The definitive views--the ones that the federal governments shall use in making decisions--emanating from the state process would be based on the divisions of powers and responsibilities covering state, regional and local government units under state law. As we have indicated previously, this division might be based on the concept of "local and regional home rule". Thus, the finality of reviews and recommendations on proposed federal actions on matters subject to final decision authority vested by law, policy or practice at the regional and local level would be represented by the general purpose regional and local units that are affected and parties to the state process. Accordingly, state agencies or the governor would represent the definitive views on all other matters not within the delegated authority of regional and local general purpose units. Finally we must recognize the situation where, under federal or state law or practice, there is shared power. Examples of this would be the development of a program of project in an urbanized area for funding by the FHwA or the development of a project in a state such as Vermont where state and local governments share local use power. These cases should be identified and arrangements for joint review and shared decision-making authority should be established.

(4) Joint Agreement on the Federal Programs and Development Action Encompassed In State Process - The E.O. envisions joint determination of the federal programs and action to be covered by the state process. Obviously, this must be accomplished prior to operation of the state process. But it is a vital component of the negotiation in establishing the state process. Local government and regional council interests, in our opinion, can best be furthered in the joint decision effort if they decide, prior to meeting

with the state, what programs they collectively will urge for inclusion in the coordination process. The division of responsibility to make the definitive response on federal proposals suggested in Section II(3) should assist the local and regional unit to identify the propose federal programs that are most relevant to them.

III. The Schematic Diagram of the Guide Coordination Process - The state system should encourage pre-application review. But, unlike the old A-95 clearinghouse system, the state-based process would not formally require pre-application notice and review. Rather, the process would encourage consultation in the pre-proposal period, and the parties would be left to negotiate incentives for such prior consultation. For example, a fast track option for the review could be provided for those who come in early. But in the case of federal agencies in direct development actions, it is suggested that they be required to consult early unless their authorizing legislation prohibits such early involvement. Therefore, assuming that the early consultation arrangement will be developed on a negotiated basis, the guide system would be characterized as follows:*

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*"A" = application

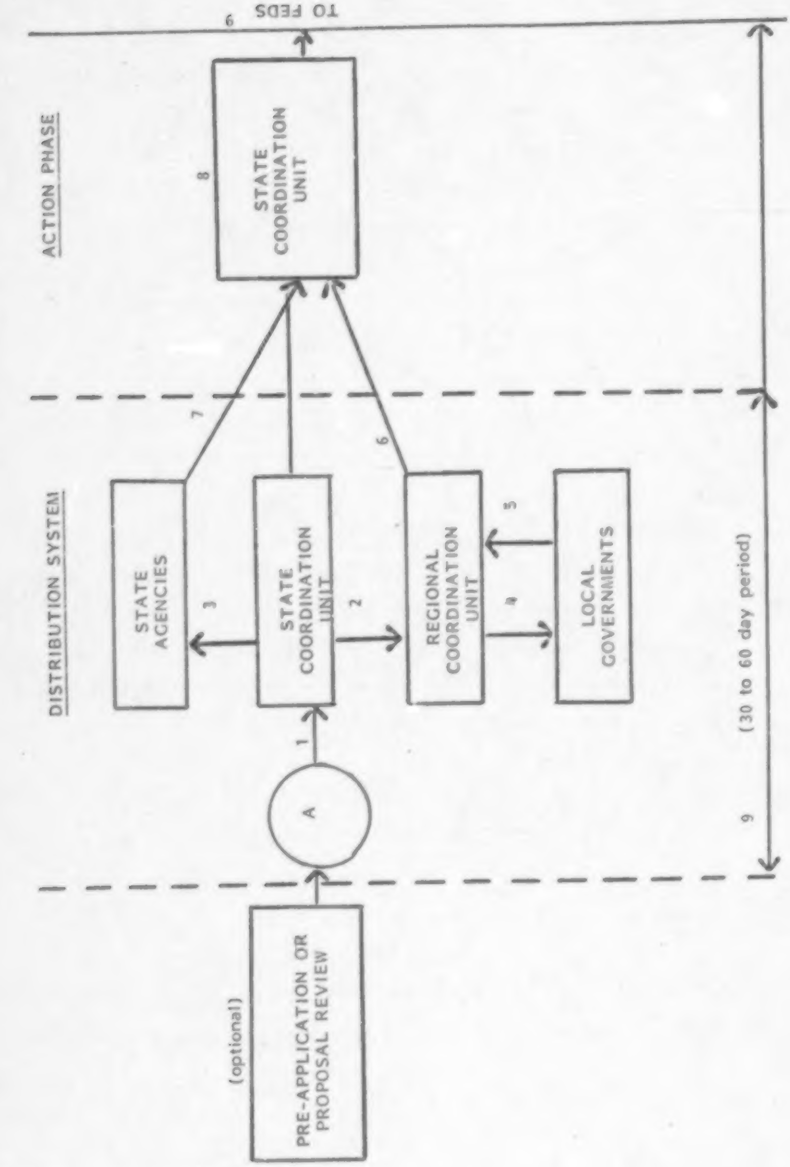
(optional)
PRE-APPLICATION OR PROPOSAL REVIEW
DISTRIBUTION SYSTEM
A
1
STATE AGENCIES
3
STATE COORDINATION UNIT
2
REGIONAL COORDINATION UNIT
4
5
LOCAL GOVERNMENTS
6
7
ACTION PHASE
STATE COORDINATION UNIT
8
9
TO FEDS
9
(30 to 60 day period)

Chart Explanation

(1) All proposals (i.e., applications for federal assistance and proposals for direct federal development actions) encompassed under state process are submitted to state coordination unit.

(2) & (3) Following the principles established by parties to state coordination process, applications or proposals then are distributed to affected state agencies and/or the designated regional council in the area affected by the proposal. In most cases, state agency referral will be unnecessary where state has not reserved advisory or decision authority over the application on the proposal affecting regional or local governmental interests.

(4) & (5) Applications or proposal affecting local government(s) are sent by regional council to such units for their comments and recommendations. If the proposal or application affects both adopted regional and local interests both the affected local government(s) and the regional council make comments and recommendations on consistency with adopted policies, plans or programs. All conflicts must be resolved at this level. In absense of conflict resolution, all comments and recommendations would go forward to the federal agency as attachments to the application; the federal agency would act after reviewing and considering all attached comments.

It should be noted that if the regional council, and local government(s) on regional and local questions respectively want the views of a special purpose regional or local agency it is their responsibility to seek and reflect these views in the review process.

(6) & (7) & (8) Within the established review period, the comments and recommendations of the state and/or designated regional council are assembled and transmitted with the application or proposal to the appropriate federal

agency. Again, the state coordination unit will not be authorized to alter the comments and recommendations received. But in case there is a state and local review and the comments and recommendations conflict, the state unit shall (a) determine in accordance with state procedure whether the state, regional or local unit has final decision authority under state law or coordination agreement and so notify the federal agency when the application is submitted; or (b) where a coordination agreement acknowledges that both the state and local units have non-exclusive decision authority, then forward the conflicting comments to the previously agreed on mechanism for reconciling such conflicts under a negotiated state conflict resolution process. Of course, the final step is for the state coordination unit to submit the application or proposal together with comments and recommendations to the appropriate federal agency.

(9) Each state will need to taylor the review periods to its own needs. However, our experience indicate that the most appropriate time frame is between 30 and 60 days.

Senator **Durenberger.** Next will be the first of two panels.

The first person to testify on this panel will be Prof. Irving Hand, who is past president of the American Planning Association and is director of the Institute of State and Regional Affairs of Pennsylvania State University. The second will be David Loch, city councilman for the city of Lake Shore, Minn. He is former executive director of the Region 5 Development Commission and is currently the executive secretary for the Board of Commissioners in Morrison County. To his right will be a frequent witness on these issues, our friend, Scott Fosler, who is a county councilman for Montgomery County, Md., chairman of the Intergovernmental Affairs Committee for the National Association of Counties.

Welcome, gentlemen.

You may proceed in the order of introduction.

TESTIMONY OF IRVING HAND, DIRECTOR, INSTITUTE OF STATE AND REGIONAL AFFAIRS, PENNSYLVANIA STATE UNIVERSITY, ON BEHALF OF THE AMERICAN PLANNING ASSOCIATION; DAVID LOCH, COUNCILMAN, LAKE SHORE, MINN., AND EXECUTIVE SECRETARY FOR MORRISON COUNTY, MINN., ON BEHALF OF REGIONAL DEVELOPMENT COMMISSION 5, STAPLES, MINN.; AND SCOTT FOSLER, COUNCILMAN, MONTGOMERY COUNTY, MD., ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES

Mr. **Hand.** Thank you, Mr. Chairman.

Within the alloted——

Senator **Durenberger.** We have a 7-minute rule today. You don't have to look at your watch. Somebody will tap on your shoulder. We will make your statement a part of the record.

Mr. **Hand.** In recognition of that fact, I am not going to address myself to a great many items in the statement since the record will carry them forward.

I would rather address myself to the point that was made in the letter that I received inviting me here this morning. I will comment on some of the points that were made earlier this morning and then, perhaps, refer to two or three recommendations that we have in the statement since they have a bearing on those points.

Senator **Durenberger.** We would appreciate your going in that direction.

Mr. **Hand.** I would submit, Mr. Chairman, that in hearing the testimony from OMB this morning, I wonder if we are getting into a simpler situation or a more complicated situation. Either I do not understand it or I understand it too well. I recall some of the reports and evaluations that have been made of the A–95 process in the past years which said there is some measure of dissent in the States and local areas regarding what A–95 is all about. This has happened because Federal agencies do not pay attention to the final recommendations that come forward, because the effort at the Federal level has not been adequately staffed. I can think of two or three reports, one by the General Accounting Office several years ago which referred specifically to the Office of Management and Budget in that regard.

I will be very happy to provide the citation for you should you wish to have that.

I mention those points, Mr. Chairman, because in light of the discussion this morning, it seems that under the Executive order a new process is being suggested. It is also implied that something is going to be there in terms of implementing the Intergovernmental Cooperation Act. That was not clear to me from the material that I had looked at previously but it was simply touched on in the comments that were made this morning.

To me, that would seem to make the entire endeavor more confusing and less appealing to the people out there who are going to have to live with that process than move in the direction of clarifying.

In the statement that we have prepared, Mr. Chairman, we refer to the costs that are going to be involved in connection with the implementation of the Executive order.

In regard to what these costs will be, a major responsibility is being imposed on the States. If they are going to respond to this new initiative, this responsibility could express itself in new State legislation that may be required, thereby gaining the trust of local governments—and you have heard several comments about that this morning—as well as strengthening the planning and management systems within State government to fulfill the kind of responsibilities expected to be exercised with this new initiative.

The State will have to fund a very fast moving and effective mediation service to resolve differences within a very short period of time—the 30-day span that is provided for. The bulk of the responsibility for making the system work and for bearing its cost is going to fall upon the States.

It is coming at a time when Federal funding has been substantially reduced. The State budgets are getting tighter and, as I pointed out earlier, many Federal agencies have paid little attention to A–95 comments in the past.

Within that kind of a context, one can question how quick and how vigorous the response is going to be from the State level. As a State planner, one would hope that the response would be strong in taking this opportunity into account.

We would hope that that would be the case. The resources to be committed to that endeavor yet remain to be identified in many instances.

Local government is likely to be confronted with paying the price of uncertainty and some might phrase it even as political disenfranchisement. They are going to have to lobby very effectively to be sure that local considerations are made part of the State process.

Regardless of the comments that have been made this morning, the Executive order does not refer to regional organizations. If, indeed, the remarks that were offered by OMB would suggest they are to be taken into account, then that provision must be made explicitly, even in the existing Executive order.

Let me simply refer to the final recommendations that we made, sir. There are three points we should keep in mind. The 30-day period should be extended right now, prior to April 30, as part of whatever directive comes forward in that regard.

It, at least, should be made a 60-day period and, if at all possible, it should be patterned after the experience we have had with section 204 of the Demonstration Cities and Metropolitan Development Act.

The notion of dealing with the array of responsibilities that have been identified within a 30-day period is simply not realistic.

There must be explicit provision for the consideration of the views and comments and participation of regional bodies. It is flying in the face of a considerable experience that has built up over the past 20 years where organizations have come into being, are doing a job, and are doing it well in many instances, to ignore them in the kind of partnership arrangement that we have under our federal system of government: Federal, State, regional, local entities participating in addressing particular issues and particular problems in a mutually interested kind of way.

I would point out in the final comment that there needs to be consideration given for a federal process to work in cases where the States have indeed not adopted the process. Because that eventuality could arise and probably will arise in some instances. A vacuum should not be meant to exist as far as expression of Federal responsibility is concerned.

Thank you, Senator.

Senator DURENBERGER. Thank you very much.

Mr. Loch, welcome.

Mr. LOCH. Mr. Chairman, I appreciate the opportunity to talk to you today. I am a councilman for the city of Lake Shore in Minnesota, which has a population of approximately 600 people. I am also the executive secretary for Morrison County in Minnesota.

I guess one of the more positive features that we have seen over the years in A-95 has been the function of communication it has provided among the local units of government. It has given us information about what is happening in the area around us, given us an opportunity to comment, and to sometimes change the situations that were not good for us.

Another more indirect benefit of A-95 that we have seen in Minnesota over the last 4 or 5 years is the development of strategic planning. In addition, our region entered into cooperative agreements with several Federal agencies: Farmers Home Administration, HUD, and the Economic Development Administration.

Unfortunately, a lot of the programs that were available to us at that time have now pretty well dissipated. The point is, we did have mutual cooperation. We looked at targeting resources to areas with greatest need. This sort of effort seems to be the trend today. We are a little concerned about what might happen to that process. If the Executive order is a result of a New Federalism, we are wondering what will happen to strategic planning.

Our regional commission is made up of 22 people, 20 of them are elected officials, 2 are special interest groups. I represent 14 cities in Cass County. We are concerned about what happens in our general area. I know that what happens in Lake Shore may have an impact in the cities around us, but I also know that what happens in the county as a whole or the region as a whole, will have an impact in terms of jobs or whatever it may be. For that reason, we desire to maintain some sort of communication system with the Federal agencies.

There were problems with A–95. I think a change was needed. We were reviewing too many programs. We needed to look more at those that had greater impact rather than the more confined impact of many A–95 reviews.

We want to keep the decisions as close to home as possible. We are fortunate that the clearinghouse function was established in the regional commissions and the Metropolitan Council in Minnesota. One of the things that also concerns me is the single point of contact with the State in this case. Yesterday morning the regional commissions and Metro Council met with some officials from the State Department of Energy Planning and Development. Their concern is that the new system is going to greatly overload the present staff. We heard on the radio down at St. Paul yesterday morning that 44 of the 50 States had severe deficits and Minnesota is one of those.

As the State planning agency is telling us, they simply don't have the staff, nor the funds to adequately coordinate the responsibilities that are presently coming through this Executive order. We were concerned to hear about that. I guess I would agree with the previous speaker's statement that if there were agencies involved previously in A–95 review, and that had been a fairly workable process, the system should be allowed to continue. We would urge that to happen.

I had a series of questions I wanted to ask. I am a little confused after reading some of the testimony that was made available to me, as well as some of the regulations, and after listening to the three gentlemen from OMB this morning. It seem as though Circular A–95 has been rescinded and in place we have the new Executive order. They said at one point that they were going to take a new process and build it on the old process. I don't quite understand what is in fact happening in this case. Are we actually changing the system or are we going to have some of the same functions as before? It was made to sound as though clearinghouses would be able to discuss issues with the Federal agencies directly. Yet, on the other hand, they say they want to work everything through the single point of contact.

Is it the intent of the Executive order and the New Federalism to withdraw from the involvement with the local government?

Does the New Federalism and review system allow for Federal interagency cooperation as we have in the past in fulfillment of their plans and strategies?

Is the new system going to allow the States to target Federal resources to areas of greatest need? Is that going to be a responsibility of Federal agencies or is some of that going to be directed or given to the State? That would be something we need to know in terms of State involvement. These are questions to which we need answers in order to adequately influence, we feel, the decisions at the State level regarding the Executive order. Thank you, Mr. Chairman.

Senator **Durenberger**. Thank you very much.

Mr. Fosler?

Mr. **Fosler**. Thank you, Mr. Chairman.

My name is Scott Fosler. I am an elected county councilman for Montgomery County and I also serve as chairman of the NACo Steering Committee for Intergovernmental Affairs.

I am delighted to present the view of NACo.

We very much appreciate the opportunity to present the county viewpoint as the Office of Management and Budget moves quite rapidly toward the implementation of this order.

Before I begin, I would like to extend the apologies of Mr. John Horsley, fourth vice president of NACo and commissioner of Kitsap County, Wash. Mr. Horsley had hoped to be able to testify this morning as well, but was not able to make it.

In general, NACo supports the concepts embodied in the Executive order. We commend the administration's efforts to reduce the burdensome paperwork of the old system.

We support the substitution of the State plans of Federal requirements and applaud the order to accommodate State and local concerns. Our testimony focuses primarily on intergovernmental concerns. Specifically we address the following points: the consultation provisions, the comment period, the State single point of contact requirement, the program's exemptions, and the need to establish a transition period.

Counties recognize that the proposed changes will be only as effective as the States are committed to making them. We are not totally confident that the States will implement this order in the spirit the administration has intended. In fact, according to our survey, nearly half of the States have not moved forward. Many States have not involved local governments. We expect many of these States will not propose changes by the implementation date. At least 10 States have made an effort to bring local governments into the process. These include my own State. I am pleased to note that the Secretary of State Planning for Maryland is here to testify this morning and can give you the perspective of the State that has made a good faith effort to implement this Executive order in full consultation with local officials. Other States that have moved ahead include Washington, as well as Missouri, Texas, Tennessee, and some others. However, the States are not uniformly committed or able to improve their review process. This exacerbates the interstate issue and clearly OMB will have to negotiate this conflict. NACo recommends jurisdictions affected by interstate conflicts follow the State plan that best meets the spirit of the Executive order. In particular we believe they should use the State plan which most effectively eliminates the paperwork burden, streamlines reviews, gives more flexibility to local officials and provides for adequate consultation with the affected local governments.

We wholeheartedly support the consultation provisions. However, note from the block grant experience, that not all States will necessarily develop successful consultation processes. Therefore, NACo recommends that the State consultation systems be evaluated in OMB's review by the following criteria.

First, the States are to establish any process allowable under State law, provided that the process has made an effort to receive local views. We do not consider advisory bodies with the disproportionate representation of State versus local officials to fulfill this requirement. Second, a draft of the State's consultation process should be published for comment, using general State operation procedures such as the State Administrative Procedures Act. This requirement would also apply to the State's entire implementation plan as well. We also believe State consultation assurances should include a signed agreement with the participating local elected officials and/or the State organizations representing the local government.

The agreement would verify that the process is the best means for consultation in that particular State. We believe these provisions would insure the State consultation process remains open for both urban and rural counties alike.

We are greatly concerned about the single State contact requirement—we are concerned with it because nearly half of the States may propose no change, and we fear that this requirement may exclude many local officials from the process. Every assurance should be made that this single contact forwards comments that truth represent State and local governments' views. The success of the order will rest most assuredly on the fact that local governments have not inadvertently been closed out of the process. Therefore, NACo recommends that the State be required to include a minority view's report in submitting their comments to Federal agencies.

The comment period under the regulation, we believe, is far too short. We recommend at least 45 days as a minimum, and believe comments should be accepted up to 60 days. This will allow the local governments to conduct thorough reviews and give adequate time to process the reviews among affected governments.

In addition, NACo wishes to raise our concern that any State's inaction to forward the reviews may cause a "pocket veto." Consequently, we believe the States should be required to submit comments by the necessary date. Failure to respond within that time allowance should not be used by an agency to refuse or terminate funds. Our concern arises from the possible use of this technique as a tool for political sanctions by the State for favored versus not so favored sons. We also believe that State and local governments should determine what programs should and should not be covered. This provision recognizes the differences among governments, their legal authorities and their regional concerns. We propose that the States and locals be allowed to present two lists, one that would include definite programs to be covered and the second to include optional programs. We would also suggest that States and locals may consider an option to include block grants as well.

Finally, we strongly urge that the implementation date be postponed until the beginning of the next fiscal year, October 1, 1983. Using the start of the next fiscal year would enhance an effective transition and reduce some of the current confusion that surrounds the Executive order.

So in conclusion, let me reiterate that we enforce the basic concept embodied in the order, but we do believe that some changes should be made to it.

We are concerned about the method of implementation. One final point, we would note that the order addresses only one aspect of the consultation, that of direct development and application review. It does not apply to grant and regulatory policies. This is a matter that I know you have been interested in and we hope will not be dropped as we proceed in looking at this new change.

This concludes our remarks. Again NACo very much appreciates the opportunity to present county government views.

Senator **Durenberger**. Let me ask just one quick question because each of you, I think, has mentioned the extension of time.

You say you would like to see it go into effect on October 1? You think the process needs another 6 months, in order to refine the proposed regulations? Or is it a mix among the States?

Mr. **Fosler**. I would say it is probably a combination. I think our feeling is that if the current implementation date is maintained, there are States that are not going to come forth. Many States that we are aware of have not consulted with their local governments. So just in terms of implementation of what exists, there are problems. In addition to that, however, hopefully a delay in the time would permit some additional opportunity for considering many of these issues which we and others have raised.

Senator **Durenberger**. Mr. Loch, let me ask you about Minnesota so you can update me on what is happening out there. I know a couple of the regional development commissions in Minnesota have dissolved. Do you have any indication of how the local governments in those regions are consulting with one another regarding the proposed applications since their regional development commissions were abandoned?

Mr. **Loch**. I haven't heard a great deal of what is happening there. As far as I know, there is just no review process in place at the present time. The State still has a perfunctory role in A-95 review. There is a metropolitan planning organization in St. Cloud. I am not aware of what is happening however. I doubt anything is happening in region 4.

Senator **Durenberger**. Is there a growing disaffection in our own State with the process or with the commissions or with lack of resources?

What seems to be the problem?

Mr. **Loch**. I don't think there is a growing dissatisfaction. It was difficult in some areas in the State for political reasons, I suppose. But the commissions that remain seem to be healthy and strong. There is concern about the lack of resources for certain programs, particularly in economic development, indicated by the trouble we have had in the Iron Range and in the recreation industry which is suffering greatly. So we are having those kinds of problems. But I think the commissions seem to be thriving. There are always small pockets of opposition that crop up here and there regarding the regional commissions or other functions of government. It is not unusual in the rural areas, but this is not true in the metropolitan areas for the most part.

Senator **Durenberger**. I suppose one of the problems in our State is that some people think the general revenue sharing concept is generous at the national level and the local level in Minnesota, and that it's done fairly well relative to local government. That seems to have been changing with restrictions on tax relief as a form of relieving the burden on local government, and various other things making the local budgets tighten up.

Is the State, given the single point of contact proposal and so forth, showing some new and different concern for utilizing the resources of regional development commissions or other combinations of local government in the resolution of some of these intergovernmental problems?

Mr. LOCH. In Minnesota, as you may be aware, the clearinghouse function is written into the Regional Development Act. However, it was not written into the Metropolitan Council Act. The State planning agency informed us yesterday morning that they intend to abide by the act. There would be no changes. In other words, the clearinghouses would continue to function through the single point of contact. Their concern is the time frame that is allowed. Thirty days would not at all be adequate because of the resolution of conflicts. Our State is so different from forested, resort, tourism areas—areas without heavy farming.

We see some problems with certain Federal programs that may affect the State as a whole. When we look at our cooperative agreements or our strategies, they are different and would affect Federal agencies differently. That is why the State is concerned about how they are going to be able to handle conflict resolution within that timeframe.

Second, there has been one staff person designated at the State agency to handle A-95 review. They feel that staffing will have to be beefed up considerably and there are no resources to do it. They are probably going to go through a reorganization of EDP as it was called and reconstitute the State planning agency again, with less funds than they have ever had.

It would be very difficult for them to carry on the review process proposed in the Executive order.

Senator DURENBERGER. Let me ask you a question, Mr. Hand, on the provision in the order that allows for the consolidation of State plans. Do you see this as a management tool that might disrupt the State planning process in some way?

Mr. HAND. Not necessarily, Mr. Chairman. For one thing it might be helpful in gaining a common threat where appropriately it should be reflected in a variety of State plans. So that a plan or policy that leads to economic development is in keeping with whatever might be proposed for transportation and carried along to its ultimate expression in terms of a capital improvements program, for example.

But all of that relates to a State planning responsibility that really is part of the system of doing business not only in the Governor's office but also with respect to the State legislature as well. This kind of endeavor very frankly should be reflected at every level of government, from the Federal Government on down to any local unit of government.

Senator DURENBERGER. If all of you were around for the OMB testimony, I would appreciate any additional reaction to their testimony, particularly on the issue of dispute resolution. Is there any way that we can find, other than submitting minority views, to deal with the potential upper hand that would be given to the States?

Mr. HAND. I thought Mr. Bosley's comments in the early testimony in responding to your point were quite appropriate.

Mr. FOSLER. I think we have attempted to address some of the points anticipated, some of the concerns that would be raised, Mr. Chairman. I thought that your suggestion as to how the disputes might be handled is an intriguing one. One of the concerns that we would have in particular is how you resolve interstate disputes. There clearly will be problems within States themselves. We perceive it as suggesting some ways to try to handle them. In addition we are concerned about what is going to happen when you have differences between the States. How are they going to resolve it?

It is not clear to us how that would be handled.

I might add one additional note just from our own experience in Montgomery County dealing with the Postal Service. We have a problem with the Postal Service's attempts to locate facilities. On one hand the State says you have an Executive order that governs how Federal agencies are supposed to handle these problems and they say we are not controlled by the Executive order. We say in that case you must be covered by our local zoning ordinance. The Postal Service then says no, we are not covered by the local zoning ordinance because we are, after all, a public agency.

So we have had some difficulty in that regard. Just recently it has created some problems for us.

Senator **DURENBERGER.** Thanks for that example.

Mr. **LOCH.** I think you have already raised a question on the basis of OMB's testimony. Does anybody else have any comments? If not, I will express my appreciation to each of you for the efforts that went into preparing for this testimony and for your commitment to make sure we do things right around here.

Thank you.

[The prepared statements of Messrs. Hand, Loch, and Fosler follow:]

STATEMENT OF

IRVING HAND, AICP
IMMEDIATE PAST PRESIDENT
AMERICAN PLANNING ASSOCIATION

MR. CHAIRMAN AND MEMBERS OF THE INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE:

MY NAME IS IRVING HAND. I AM PROFESSOR OF STATE AND REGIONAL PLANNING, CHAIRMAN OF THE GRADUATE PROGRAM IN URBAN AND REGIONAL PLANNING, AND DIRECTOR OF THE INSTITUTE OF STATE AND REGIONAL AFFAIRS OF THE PENNSYLVANIA STATE UNIVERSITY AT THE CAPITOL CAMPUS.

IN MY 35 YEARS IN PLANNING, I HAVE BEEN EXECUTIVE DIRECTOR FOR THE PENNSYLVANIA STATE PLANNING BOARD (1964-1972), PLANNING DIRECTOR FOR THE NASHVILLE, TENNESSEE, METROPOLITAN GOVERNMENT (1953-1964) AND DIRECTOR OF THE TULSA, OKLAHOMA METROPOLITAN AREA PLANNING COMMISSION (1950-1953).

I AM A MEMBER OF THE AMERICAN INSTITUTE OF CERTIFIED PLANNERS (AICP).

I AM ALSO IMMEDIATE PAST PRESIDENT OF THE AMERICAN PLANNING ASSOCIATION, AND IT IS IN THIS CAPACITY THAT I APPEAR HERE TODAY.

I WELCOME THIS OPPORTUNITY TO TESTIFY ON BEHALF OF THE AMERICAN PLANNING ASSOCIATION, AND RESPECTFULLY REQUEST THAT THE COMPLETE TEXT OF MY PREPARED STATEMENT BE INCLUDED IN THE HEARING RECORD.

THE AMERICAN PLANNING ASSOCIATION IS A NATIONAL ORGANIZATION OF SOME 21,000 MEMBERS: CITY, COUNTY, METROPOLITAN, REGIONAL AND STATE PLANNERS, INCLUDING ELECTED AND APPOINTED OFFICIALS AT ALL LEVELS OF GOVERNMENT, PROFESSIONAL PRACTITIONERS, EDUCATORS, INTERESTED CITIZENS AND STUDENTS. THAT MEMBERSHIP BELONGS TO 46 CHAPTERS COVERING VIRTUALLY EVERY STATE AND CONGRESSIONAL DISTRICT. MEMBERS WITH SPECIAL INTERESTS MAY ALSO BE ASSOCIATED WITH ANY ONE OR SEVERAL OF 18 DIVISIONS, SUCH AS THE METROPOLITAN AND NATIONAL PLANNING DIVISION, THE CITY PLANNING AND MANAGEMENT DIVISION, THE STATE PLANNING DIVISION, AND THE ECONOMIC DEVELOPMENT DIVISION.

THE AMERICAN PLANNING ASSOCIATION IS THE RESULT OF THE 1978 CONSOLIDATION OF THE AMERICAN INSTITUTE OF PLANNERS, ESTABLISHED IN 1917, AND THE AMERICAN SOCIETY OF PLANNING OFFICIALS, FOUNDED IN 1934. THE ASSOCIATION'S PRIMARY OBJECTIVE IS TO ADVANCE THE ART AND SCIENCE OF PLANNING IN THE OVERALL DEVELOPMENT OF THE NATION AND OF ITS COMMUNITIES, CITIES, REGIONS AND STATES.

WITHIN APA IS THE AMERICAN INSTITUTE OF CERTIFIED PLANNERS, THAT ARM OF OF THE APA WHICH FOCUSES ON PROFESSIONAL DEVELOPMENT AND WHOSE MEMBERS ARE DISTINGUISHED BY HAVING PASSED AN EXAMINATION ON PLANNING PRINCIPLES AND PRACTICES.

PRIOR TESTIMONY.

MR. CHAIRMAN, APA APPRECIATES HAVING HAD THE OPPORTUNITY TO SUBMIT ITS VIEWS ON THE SUBSTANCE OF THE MATTER BEFORE YOU TODAY AND ON PRIOR OCCASIONS. BY OUR LETTER OF APRIL 22, 1982, AT HEARINGS ON REVISIONS TO OMB CIRCULAR A-95, WE NOTED THAT:

> APA VIEWS INTERGOVERNMENTAL RELATIONS AS A KEY ELEMENT OF PLANNING IN THE AMERICAN FEDERAL SYSTEM AND BELIEVES THAT 'EVERY LEVEL OF GOVERNMENT SHOULD HAVE AN OPPORTUNITY TO EXPRESS ITS VIEWS ABOUT DECISIONS MADE AT OTHER LEVELS THAT WOULD HAVE A SUBSTANTIAL IMPACT ON ITS JURISDICTION.' (SUMMARY OF PLANNING POLICIES OF THE AMERICAN PLANNING ASSOCIATION, ADOPTED APRIL 1981.) A-95 IS THE ONLY GOVERNMENTWIDE PROCESS THAT PROVIDES THE OPPORTUNITY FOR SUCH INTERGOVERNMENTAL DIALOGUE. IN APA'S EXPERIENCE, THE A-95 CLEARINGHOUSES HAVE ESTABLISHED AND REINFORCED UNIQUE AND ESSENTIAL INTERGOVERNMENTAL COMMUNICATIONS CHANNELS THAT, FOR THE MOST PART, DID NOT EXIST BEFORE A-95 CAME INTO BEING. THE A-95 PROCESS IS NEEDED NOW, MORE THAN EVER, AND SHOULD BE CONTINUED IN THE YEARS AHEAD.

MR. CHAIRMAN, THE TESTIMONY I PRESENT TODAY REFLECTS THAT CONTINUED JUDGMENT. WHILE IT ADDRESSES THE PURPOSE AND FUNCTIONING OF THE PROCESS FROM THE CONTEXT OF EXECUTIVE ORDER 12372, IT DOES SO IN THE HOPE OF BUILDING ON ALL THAT WE LEARNED FROM FIFTEEN YEARS OF EXPERIENCE FROM ITS PREDECESSOR ACTIVITY, EXPERIENCE FROM WHICH LESSONS LEARNED CAN PROVIDE INSIGHT AND UNDERSTANDING VALUABLE TO THE DESIRED INTERGOVERNMENTAL REVIEW AND COORDINATION. THE NEEDS FOR INTERGOVERNMENTAL COORDINATION TODAY ARE NO LESS ENORMOUS THAN THEY WERE WHEN THE INTERGOVERNMENTAL COOPERATION ACT OF 1968 WAS PASSED BY THE CONGRESS. THE ACT IS STILL ON THE STATUTE BOOKS AND PROVIDES THE ESSENTIAL BASIS FOR A-95 AND ITS SUCCESSOR ACTIVITIES.

THOSE NEEDS RANGE FROM DISPOSITION OF WASTE--SOLID WASTE OR "GOLDEN GARBAGE" AS SOME WERE REFERRING TO IT SOME FIFTEEN YEARS AGO, BUT WITH MUCH HEIGHTENED CONCERN TODAY ABOUT HAZARDOUS WASTE, A CONDITION OF WIDESPREAD NATIONAL ANXIETY WHICH OFTEN MAKES THE DAILY NEWS--TO WATER AND AIR POLLUTION, TO TRANSPORTATION SYSTEMS, TO SYSTEMS FOR THE PROVISION OF HEALTH SERVICES, TO LAW ENFORCEMENT AND CRIMINAL JUSTICE AND TO ECONOMIC DEVELOPMENT.

NOW THESE ARE AREAS OF CONCERN--INSOFAR AS A PUBLIC RESPONSIBILITY MAY BE JUDGED APPROPRIATE--THAT MOST OFTEN TRANSCEND THE BOUNDARIES OF LOCAL JURISDICTIONS AND TOO OFTEN HAVE FALLEN BETWEEN THE CRACKS OF EXISTING GOVERNMENTAL STRUCTURE.

THAT IS WHY THE COMMUNICATION AND COORDINATION OF AN A-95 PROCESS HAS WITHIN IT THE SEED TO NOURISH AN IMPORTANT DYNAMIC IN OUR FEDERAL SYSTEM OF GOVERNMENT: A FEDERAL-STATE-REGIONAL-LOCAL PARTNERSHIP TO DEAL WITH PROJECTS WHICH WARRANT THEIR MUTUAL ATTENTION BECAUSE THERE IS A FEDERAL INTEREST, A STATE INTEREST, A REGIONAL AND A LOCAL INTEREST TO BE ADDRESSED.

PLANNING AND MANAGEMENT TODAY

A PUBLIC PLANNING AND MANAGEMENT STRUCTURE HAS BEEN EMERGING IN THIS COUNTRY. ALTHOUGH UNDER INTENSIVE SCRUTINY AND RESULTING MODIFICATION TODAY, IT CONTINUES TO BE AN INTERGOVERNMENTAL RELATIONSHIP OF NO SMALL DIMENSION WHOSE PRINCIPAL PARTICIPANTS DESIRABLY ARE:

- THE FEDERAL ESTABLISHMENT AND ITS PLANNING AND MANAGEMENT RESPONSIBILITIES EXERCISED THROUGH APPROPRIATE CONGRESSIONAL POLICY AND PROGRAM EXPRESSION, AND EXECUTIVE BRANCH DIRECTION AND EXECUTION;
- THE GOVERNORS AND STATE LEGISLATORS FUNCTIONING THROUGH THEIR RESPECTIVE STATE-LOCAL PLANNING AND MANAGEMENT MECHANISMS;
- INTERGOVERNMENTAL REGIONAL PLANNING AND POLICY DETERMINATION ORGANIZATIONS; AND

- THE UNITS OF GENERAL PURPOSE LOCAL GOVERNMENTS: THE TOWNS, CITIES AND COUNTIES OF THIS NATION.

APA HAS BEFORE ITS MEMBERSHIP TODAY, WITH ACTION TO BE TAKEN AT ITS NATIONAL CONFERENCE NEXT MONTH, THE DRAFT OF A REVISED POLICY ON INTERGOVERNMENTAL RELATIONS. IT PROPOSES A COMPREHENSIVE SYSTEM OF NATIONAL STRATEGIC PLANNING THAT INCLUDES THE SEVERAL LEVELS OF GOVERNMENT.

- IT CALLS FOR PLANNING AS A MANDATED RESPONSIBILITY OF EACH LEVEL OF GOVERNMENT.
- IT CALLS FOR THE EXPLICIT PROVISION FOR THE EXERCISE OF A PLANNING RESPONSIBILITY IN THE OFFICE OF THE PRESIDENT AND IN THE CONGRESS. IT NOTES THE FUNCTIONING OF THE OFFICE OF MANAGEMENT AND BUDGET AND THE CONGRESSIONAL BUDGET OFFICE, RESPECTIVELY, AND SUGGESTS PARALLEL PLANNING OFFICES.
- IT STATES THAT: "APA BELIEVES THAT THE HIGHEST PRIORITY FOR NATIONAL PLANNING IS THE INITIATION OF A FEDERAL CAPITAL IMPROVEMENTS PROGRAM."

- IT ARGUES THAT FEDERAL PLANNING REQUIREMENTS SHOULD SEE TO THE COORDINATION OF FEDERALLY-ASSISTED PROGRAMS WITH COMPREHENSIVE PLANS OF RECIPIENT GOVERNMENTS AND THAT FEDERAL APPROVAL OF PROJECTS SHOULD BE CONTINGENT UPON CONSISTENCY WITH SUCH LOCAL, COUNTY OR STATE PLANS.
- IT PRESENTS THE PRIMARY FOCUS OF STATE PLANNING AS POLICY DEVELOPMENT, CAPITAL IMPROVEMENTS PROGRAMMING, FORMULATION OF STATE DEVELOPMENT GOALS, AND INTERAGENCY COORDINATION, FUNCTIONING WITHIN THE EXECUTIVE OFFICE OF THE GOVERNOR.
- IT UNDERSCORES STATE ENCOURAGEMENT AND SUPPORT OF REGIONAL, COUNTY AND MUNICIPAL PLANNING, INCLUDING INTERGOVERNMENTAL COORDINATION, AS BEING IN THE STATE AND LOCAL INTEREST.
- IT PROFILES REGIONAL PLANNING, ACKNOWLEDGING ITS ROLE IN FOSTERING INTERGOVERNMENTAL COMMUNICATION AND COOPERATION AND NOTES "WHERE URBAN REGIONS CHOOSE TO SET UP REGIONAL GOVERNMENTS . . . THE STATE AND THE FEDERAL GOVERNMENT SHOULD SUPPORT THAT SHIFT AND PROVIDE ADMINISTRATIVE AND PLANNING FUNDING FOR THIS STRENGTHENED LOCAL GOVERNMENT MANAGEMENT CAPABILITY."

- IT OBSERVES THAT MANY COUNTIES HAVE BECOME GENERAL PURPOSE GOVERNMENTS, INCREASINGLY IMPORTANT AS SERVICE PROVIDERS, PARTICULARLY IN URBAN AREAS, AND THAT COUNTY PLANNING IS IMPORTANT IN SHAPING HOW A COUNTY GOVERNMENT MAY CHOOSE TO DEAL WITH THOSE RESPONSIBILITIES.
- IT ACKNOWLEDGES THE MATURING OF THE LOCAL MUNICIPAL PLANNING EXPERIENCE IN THIS COUNTRY AND CONCLUDES:

> DECISION MAKING IN LOCAL GOVERNMENT DEMANDS SOUND ADVICE PARTICULARLY IN A PERIOD OF FISCAL STRINGENCY AND LIMITED RESOURCES. TODAY, THE EXERCISE OF A MANDATED PLANNING RESPONSIBILITY IS WARRANTED IN THE BEST PUBLIC INTEREST OF THE COMMUNITY AND ITS PEOPLE.

AS ONE MAY NOTE, THREADED THROUGH THIS STRUCTURE OF PLANNING AND MANAGEMENT IS AN INTERGOVERNMENTAL REVIEW AND COORDINATION PROCESS ADEQUATELY PROVIDED FOR.

IN MY TESTIMONY TODAY, I WILL ADDRESS HOW THE REPLACEMENT OF THE OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-95 WITH EXECUTIVE ORDER 12372 (AND SOME 25 SETS OF FEDERAL AGENCY REGULATIONS UNDER THAT ORDER) OPENS SOME MAJOR NEW OPPORTUNITIES FOR INTERGOVERNMENTAL CONSULTATION THROUGHOUT THE NATION. I

WILL CONTEND, HOWEVER, THAT THESE OPPORTUNITIES CARRY WITH THEM A HIGH PRICE--ONE THAT IS HIGHER THAN IT NEEDS TO BE.

THE AMERICAN PLANNING ASSOCIATION LONG HAS SUPPORTED AND CONTINUES TO SUPPORT THE CONCEPT OF INTERGOVERNMENTAL CONSULTATION. APA ALSO SUPPORTS A STRONG ROLE FOR THE FEDERAL GOVERNMENT IN PROMOTING SUCH CONSULTATION. APA MAINTAINS THAT BOTH ARE KEY INGREDIENTS LEADING TO SOUND PLANNING AND, IN TURN, WISE DECISION-MAKING AND THE PRUDENT USE OF FEDERAL DOLLARS.

THE AMERICAN FEDERAL SYSTEM OF GOVERNMENT--CREATING FEDERAL, STATE, LOCAL AND REGIONAL PARTNERSHIPS--HAS INTERGOVERNMENTALIZED A GREAT DEAL OF "THE BUSINESS OF GOVERNMENT." THIS INTERGOVERNMENTALIZED SYSTEM CAN WORK WELL ONLY IF A STRONG PROCESS OF INTERGOVERNMENTAL CONSULTATION IS MAINTAINED. OMB CIRCULAR A-95 HAS BEEN THE EFFECTIVE CENTERPIECE OF THIS PROCESS FOR MORE THAN A DECADE, AND APA HAS SUPPORTED ITS USE AND IMPROVEMENT. NOW, AS MUCH AS APA FAVORS THE NEW OPPORTUNITIES PROVIDED UNDER THE NEW EXECUTIVE ORDER AND ITS ASSOCIATED REGULATIONS, **THE TRANSITION AWAY FROM A-95, ON BALANCE, RUNS A HIGH RISK OF SUBSTANTIALLY WEAKENING THE NATION'S INTERGOVERNMENTAL CONSULTATION PROCESS AND PLANNING.**

IN THIS TESTIMONY, I WOULD LIKE TO (1) BRIEFLY COMMENT ON THE ORIGINS AND PURPOSES OF A-95, (2) ACKNOWLEDGE AND COMMEND THE NEW OPPORTUNITIES BEING OFFERED TO THE STATES BY THE NEWLY PROPOSED FEDERAL REGULATIONS, (3) NOTE THE PRICE TO BE PAID BY EACH LEVEL OF GOVERNMENT UNDER THE PROPOSED PROCESS, AS COMPARED TO THE A-95 PROCESS, AND (4) SUGGEST HOW THE PROPOSED FEDERAL REGULATIONS SHOULD BE REVISED TO MORE FULLY IMPLEMENT THE INTENT OF EXISTING FEDERAL LAWS.

ORIGINS AND PURPOSES OF A-95

INTERGOVERNMENTAL CONSULTATION GREW IN IMPORTANCE DURING THE MID-PART OF THIS CENTURY AS THE FEDERAL GOVERNMENT'S ROLE IN DOMESTIC AFFAIRS EXPANDED. MANY FEDERAL-AID PROGRAMS FOR ACTIVITIES CARRIED OUT BY STATE AND LOCAL GOVERNMENTS CAME TO BE OFFERED BY A WIDE ARRAY OF FEDERAL AGENCIES. THESE FEDERAL-AID ACTIVITIES ADDED TO THE INCREASING DOMESTIC INFLUENCE OF EXPANDING PROGRAMS ADMINISTERED DIRECTLY BY FEDERAL AGENCIES THEMSELVES. PLANNING REQUIREMENTS OFTEN WERE INCLUDED IN THE EMERGING FEDERAL-AID PROGRAMS TO HELP ENSURE THAT FEDERAL FUNDS WOULD BE SPENT WISELY AND PRODUCTIVELY BY THE STATE AND LOCAL RECIPIENTS. BUT EACH PROGRAM HAD SEPARATE PLANNING REQUIREMENTS THAT

DID NOT ALWAYS ENSURE COORDINATION WITH OTHER GRANTS OR WITH THE DIRECT ACTIVITIES OF FEDERAL AGENCIES. AS METROPOLITAN AREAS EXPLODED WITH RAPID GROWTH AFTER WORLD WAR II, THEY BECAME THE FOCUS OF MANY NEW FEDERAL INITIATIVES, AND SPURRED INCREASING CONFLICTS AMONG FEDERAL AND FEDERALLY-AIDED PROJECTS.

THE FEDERAL RESPONSE TO THIS RISING LEVEL OF CONFLICT WAS TO LOOK TOWARD COMPREHENSIVE METROPOLITAN PLANNING. AT FIRST, THERE WAS FEDERAL PLANNING ASSISTANCE TO ENCOURAGE METROPOLITAN AREAS TO DO SUCH PLANNING. THEN THERE WERE REQUIREMENTS FOR THAT PLANNING TO BE DONE BEFORE THOSE AREAS COULD RECEIVE FEDERAL GRANTS FOR PROGRAMS LIKE PARKS, WATER AND SEWER FACILITIES, HIGHWAYS, AND MASS TRANSIT. SOME FINANCIAL INCENTIVES WERE OFFERED IN THE 1960s FOR PROJECTS CERTIFIED TO BE IN CONFORMANCE WITH METROPOLITAN PLANNING. AND THEN IN 1966, SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT REQUIRED THAT ALL FEDERAL-AID PROJECTS FOR METROPOLITAN DEVELOPMENT BE REVIEWED BY THE AREA'S METROPOLITAN PLANNING ORGANIZATION FOR CONSISTENCY WITH ITS PLANS. THE RESULTING COMMENTS HAD TO BE ATTACHED TO THE APPLICATIONS FOR FUNDING THE REVIEWED PROJECTS SO THE APPROPRIATE FEDERAL AGENCY WOULD BE AWARE OF RELEVANT

PLANNING BEFORE MAKING ITS AWARDS. OMB CIRCULAR A-82 WAS ISSUED TO IDENTIFY THE AREAS WHERE THIS REQUIREMENT APPLIED, THE METROPOLITAN PLANNING ORGANIZATIONS THAT WERE TO MAKE THE REVIEWS, AND THE FEDERAL-AID PROGRAMS TO BE REVIEWED DURING THE LEGISLATIVELY PROVIDED 60-DAY REVIEW PERIOD.

OMB HAD ALSO ISSUED CIRCULAR A-80 TO COORDINATE FEDERAL ASSISTANCE FOR METROPOLITAN PLANNING IN EACH AREA UNDER A SINGLE WORK PROGRAM AND A CONSISTENT SET OF PLANNING ASSUMPTIONS WHEN FEDERALLY ASSISTED METROPOLITAN PLANNING WAS DONE BY MORE THAN ONE ORGANIZATION IN THE AREA. THE PURPOSE OF THIS CIRCULAR IS TO REDUCE DUPLICATION IN THE USE OF PLANNING FUNDS AND PRODUCE HIGHER QUALITY METROPOLITAN PLANNING ADVICE.

TITLE IV OF THE INTERGOVERNMENTAL COOPERATION ACT OF 1968 EXPANDED THE SCOPE OF INTERGOVERNMENTAL CONSULTATION TO INCLUDE (1) NON-METROPOLITAN REGIONS AS WELL AS METROPOLITAN ONES, (2) STATE REVIEWS OF PROJECTS AS WELL AS REGIONAL REVIEWS, (3) NON-DEVELOPMENT PROGRAMS AS WELL AS PHYSICAL DEVELOPMENT ONES, AND (4) FEDERAL AGENCIES' OWN ACTIVITIES AS WELL AS THEIR FINANCIAL ASSISTANCE PROGRAMS.

IN 1969 OMB ISSUED CIRCULAR A-95 ON BEHALF OF THE PRESIDENT WHO IS REQUIRED BY THE 1968 ACT TO PROVIDE IMPLEMENTING REGULATIONS. CIRCULAR A-95

ENCOMPASSED AND REPLACED CIRCULARS A-80 AND A-82, THEREBY IMPLEMENTING BOTH THE 1966 AND 1968 ACTS AND PROVIDING SOUND PLANNING ADVICE TO FEDERAL AGENCIES. THUS, A-95 ESTABLISHED AN OMNIBUS INTERGOVERNMENTAL CONSULTATION PROCESS. IT PROVIDED SOME DEGREE OF COORDINATION AMONG FEDERAL AGENCIES AS WELL AS AMONG THE STATE, REGIONAL AND LOCAL LEVELS OF GOVERNMENT.

CIRCULAR A-95 HAS PROVIDED FEDERALLY PRESCRIBED PROCEDURES AND TIME LIMITS FOR STATE, LOCAL AND REGIONAL REVIEW OF PROPOSED PLANS AND PROJECTS OF THE TYPES ENUMERATED IN THE CIRCULAR. ALTHOUGH IMPROVEMENTS WERE MADE IN THE CIRCULAR FROM TIME TO TIME, IT HAS BEEN CRITICIZED AS (1) REQUIRING NOTIFICATIONS ABOUT TOO MANY PROJECTS OF LIMITED SIGNIFICANCE, (2) NOT MAKING ENOUGH DIFFERENCE IN TOO MANY CASES OF FEDERAL AGENCY DECISION-MAKING, AND (3) NOT BEING WELL ENOUGH FUNDED IN MANY PARTS OF THE COUNTRY TO REALIZE ITS POTENTIAL FOR EFFECTIVE COORDINATION.

NEW OPPORTUNITIES UNDER E.O. 12372

THE NEW EXECUTIVE ORDER SEEKS TO RECTIFY TWO OF A-95's PROBLEMS (1) BY GIVING STATES--IN CONSULTATION WITH LOCAL ELECTED OFFICIALS--DISCRETION IN REDUCING PAPERWORK BURDENS BY PROCESSING A LIMITED SET OF PROPOSED PROJECTS, ESTABLISHING STREAMLINED PROJECT REVIEW PROCEDURES, AND SIMPLIFYING, CONSOLIDATING OR SUBSTITUTING STATE DOCUMENTS FOR FEDERALLY REQUIRED STATE PLANS; AND (2) BY COMMITTING FEDERAL AGENCIES TO THE PRINCIPLE OF "ACCOMMODATING" THE STATE AND LOCAL VIEW OF REVIEWED PROJECTS IF AT ALL POSSIBLE.

WHAT IS ENVISIONED UNDER E.O. 12372 AND THE PROPOSED REGULATIONS IS A NEW FORM OF STATE-ORIENTED INTERGOVERNMENTAL CONSULTATION, IN WHICH EACH STATE--AFTER CONSULTING ITS LOCAL GOVERNMENTS--WILL ESTABLISH PROCEDURES FOR:

- NOTIFYING AFFECTED PARTIES ABOUT APPLICATIONS FOR FEDERAL AID AND PROPOSALS FOR FEDERAL AGENCY ACTIVITIES WITHIN THE STATE;
- COLLECTING ALL STATE AND LOCAL VIEWPOINTS ON EACH PROJECT REVIEWED WITHIN THE STATE AT A SINGLE POINT AND RESOLVING ANY DIFFERENCES AMONG THEM; AND
- COMMUNICATING A SINGLE VIEW ON EACH PROJECT TO THE RESPONSIBLE FEDERAL AGENCY THROUGH A "SINGLE POINT OF CONTACT" IN THE STATE WITHIN 30 DAYS OF THE INITIAL NOTIFICATION.

THIS CENTRAL ROLE FOR THE STATES, IF PLAYED CREATIVELY AND EFFECTIVELY, COULD CREATE STRONGER AND MORE EFFICIENT STATES, BETTER RELATIONS BETWEEN THE STATES AND THEIR LOCALITIES, AND GREATER INFLUENCE OVER FEDERAL DECISIONS BY THE STATE AND LOCAL GOVERNMENTS. THE STATES WOULD BECOME STRONGER BECAUSE OF THE INCENTIVES TO DEVELOP COORDINATED STATE POLICIES IN EACH FIELD OF FEDERAL ACTIVITY AFFECTING THE STATE AND TO DEVELOP THE "SINGLE VIEW" WITHIN THE STATE THAT WOULD QUALIFY STATE POLICIES FOR "ACCOMMODATION" BY FEDERAL AGENCIES.

STATES--HAVING TO PAY FOR THE REVIEW PROCESS THEMSELVES--WILL HAVE INCENTIVES TO CONCENTRATE UPON ONLY THOSE FEDERAL AND FEDERALLY-AIDED ACTIVITIES MOST DIRECTLY AFFECTING THE MOST VITAL POLICIES OF THE STATE, AND TO KEEP THE REVIEW PROCEDURES SIMPLE, QUICK AND INEXPENSIVE. THE PROPOSED REGULATIONS ALSO PROVIDE INCENTIVES FOR STATES TO IMPROVE RELATIONS WITH THEIR LOCALITIES. THIS IS SO THAT STATE AND LOCAL POLICIES AGREE CLOSELY ENOUGH WITH EACH OTHER TO MINIMIZE DIFFERENCES OF VIEWS ABOUT PROPOSED PROJECTS AND RENDER THEM CAPABLE OF BEING RESOLVED WITHIN THE 30 DAYS ALLOWED TO QUALIFY FOR "ACCOMMODATION" BY FEDERAL AGENCIES. WITH EACH OF THESE CONDITIONS MET, THE STATE-DESIGNED AND STATE-OPERATED INTERGOVERNMENTAL CONSULTATION PROCESS IS PROMISED TO BE REWARDED WITH GREATER INFLUENCE OVER FEDERAL AGENCY DECISIONS.

APA APPLAUDS THE OBJECTIVES OF (1) ALLOWING INCREASED DISCRETION AT STATE AND LOCAL LEVELS TO STREAMLINE THE CONSULTATION PROCESS, AND (2) ENHANCING THE INFLUENCE OF STATE AND LOCAL VIEWS OVER FEDERAL DECISIONS. NEVERTHELESS, THESE GOALS MUST BE APPROACHED CAREFULLY TO AVOID CREATING UNINTENDED BURDENS.

THE PRICE OF NEW OPPORTUNITIES

I WILL NOW OUTLINE THE PRICE OF THESE NEW OPPORTUNITIES TO THE STATES, LOCAL GOVERNMENTS, REGIONAL PLANNING ORGANIZATIONS AND THE FEDERAL GOVERNMENT.

THE STATES, OF COURSE, HAVE THE MOST OBVIOUS PRICE TO PAY FOR THEIR NEW-FOUND FREEDOM TO DESIGN MORE EFFECTIVE AND MORE EFFICIENT CONSULTATION PROCESSES FOR INFLUENCING FEDERAL ACTIONS. NEW STATE LEGISLATION MAY BE NEEDED IN A NUMBER OF STATES. MOST STATES WILL NEED TO DEVELOP NEW ADMINISTRATIVE REGULATIONS. MAJOR EFFORTS WILL BE NEEDED IN MANY STATES TO EARN THE TRUST OF LOCAL GOVERNMENTS BY ENSURING THAT STATE GOVERNMENT WILL ADEQUATELY PROTECT THE LOCAL "RIGHT TO KNOW" ABOUT PLANS AND PROJECTS AFFECTING LOCAL JURISDICTIONS AND REGIONAL INTERESTS. PLANNING AND MANAGEMENT SYSTEMS WITHIN STATE GOVERNMENTS WILL NEED TO BE "BEEFED UP" IN MANY CASES TO PROVIDE AN ADEQUATE POLICY BASIS FOR COORDINATING A "SINGLE STATE VIEW" AND RESOLVING DIFFERENCES WITH LOCAL AND REGIONAL VIEWS. THE STATE WILL HAVE TO FUND A FAST-MOVING AND EFFECTIVE

MEDIATION SERVICE TO RESOLVE DIFFERENCES OF VIEWS WITHIN A VERY SHORT PERIOD OF TIME (PROBABLY A SMALL FRACTION OF THE 30-DAY SPAN FEDERALLY ALLOWED FOR MAKING PROJECT NOTIFICATIONS AND DEVELOPING DIVERSE VIEWS IN ADDITION TO AGREEING UPON A SINGLE VIEW). FINALLY, THE STATE MUST BE PREPARED TO APPEAL AND PURSUE ANY FEDERAL "NON-ACCOMMODATION" OF A PROJECT WITHIN TEN DAYS AFTER FEDERAL ACTION IS TAKEN. IN SHORT, THE BULK OF THE RESPONSIBILITY FOR MAKING THE SYSTEM WORK AND FOR BEARING ITS COSTS WOULD FALL UPON THE STATES.

THIS SHIFT OF RESPONSIBILITY TO THE STATES COMES AT A TIME WHEN MANY OF THEM HAVE BEEN PUTTING LESS EFFORT INTO INTERGOVERNMENTAL CONSULTATION BECAUSE (1) FEDERAL FUNDING FOR IT HAS BEEN SUBSTANTIALLY REDUCED, (2) STATE BUDGETS HAVE BEEN GETTING TIGHTER, AND (3) MANY FEDERAL AGENCIES HAVE PAID LITTLE ATTENTION TO A-95 COMMENTS. IT IS PROBLEMATIC, THEN, WHETHER THE STATES WILL BE WILLING TO INVEST SUBSTANTIAL NEW FUNDS IN DEVELOPING THE MUCH MORE VIGOROUS CONSULTATION DUTIES REQUIRED OF THEM TO QUALIFY FOR THE PROMISED INCREASE IN INFLUENCE OVER FEDERAL DECISIONS.

TURNING OUR ATTENTION TO LOCAL GOVERNMENTS, IT IS THIS LEVEL OF GOVERNMENT WHICH WILL PAY THE PRICE OF UNCERTAINTY AND POTENTIAL DISENFRANCHISEMENT.

MANY LOCAL GOVERNMENTS DISTRUST STATE GOVERNMENT BECAUSE OF ITS HISTORICAL NEGLECT OF LOCAL NEEDS. THESE LOCALITIES FEAR THAT THE STATE WILL CONSULT WITH THEM ONLY IN A PERFUNCTORY FASHION. THEY ARE CONCERNED THAT STATES WILL ESTABLISH A PROJECT REVIEW SYSTEM THAT PROVIDES TOO SHORT A LIST OF PROJECTS SUBJECT TO REVIEW AND INADEQUATE NOTIFICATION OF AFFECTED PARTIES AT THE LOCAL LEVEL. MOREOVER, LOCALITIES SUSPECT THAT STATES WILL GIVE INADEQUATE WEIGHT FOR LOCAL VIEWS IN DEVELOPING "A SINGLE STATE VIEW," OR INADEQUATE ATTENTION TO LOCAL PRIORITIES IN APPEALING CASES OF FEDERAL "NON-ACCOMMODATION."

LOCAL GOVERNMENTS ALSO WORRY THAT THE STATE MAY NOT ESTABLISH A PROCESS AT ALL, LEAVING LOCAL OFFICIALS WITH NO FEDERALLY RECOGNIZED PROCEDURES TO USE FOR INTERGOVERNMENTAL CONSULTATION. THE PROPOSED FEDERAL AGENCY REGULATIONS UNDER E.O. 12372 ESTABLISH NO CRITERIA FOR ADEQUATE STATE CONSULTATION WITH LOCAL OFFICIALS. THE REGULATIONS DO NOT--INDEED CANNOT--REQUIRE THE STATES TO ESTABLISH A CONSULTATION PROCESS. LOCAL GOVERNMENTS WILL HAVE TO MOUNT A MAJOR CAMPAIGN TO LOBBY THEIR STATES IF THEY WANT TO REMAIN A PART OF THE INTERGOVERNMENTAL CONSULTATION PROCESS.

AS FOR REGIONAL PLANNING ORGANIZATIONS, OVER 500 OF WHICH HAVE BEEN PERFORMING AS AREAWIDE A-95 CLEARINGHOUSES, THEY ARE NOT EVEN MENTIONED IN E.O. 12372 OR THE PROPOSED FEDERAL AGENCY REGULATIONS. THIS ORDER AND ITS REGULATIONS MAKE NO ATTEMPT TO IMPLEMENT SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OR THE "REGIONAL" PROVISIONS IN TITLE IV OF THE INTERGOVERNMENTAL COOPERATION ACT. IN ADDITION, THE COORDINATION OF METROPOLITAN PLANNING PROGRAMS--ADDRESSED IN PART IV OF A-95--IS COMPLETELY OMITTED FROM THE PROPOSED REGULATIONS. EVEN FOR THE NATION'S 41 INTERSTATE METROPOLITAN AREAS, THERE IS NO REFERENCE TO THE NEED FOR AREAWIDE CLEARINGHOUSES TO FACILITATE CONSULTATION ACROSS STATE LINES. REGIONAL PLANNING ORGANIZATIONS, THEREFORE, FACE THE SAME UNCERTAINTY, POTENTIAL DISENFRANCHISEMENT, AND NEED TO LOBBY THE STATES AS DO THE LOCAL GOVERNMENTS. THEY ALSO FACE THE ADDITIONAL BURDEN OF FINDING NEW SOURCES OF FUNDING FOR THEIR CLEARINGHOUSE ACTIVITIES, SINCE MUCH OF THEIR FEDERAL FUNDING--WHICH TRADITIONALLY HAS ACCOUNTED FOR ABOUT 75 PERCENT OF THEIR BUDGETS, ON THE AVERAGE--HAS BEEN WITHDRAWN.

THE FEDERAL GOVERNMENT ALSO IS LIKELY TO PAY A STEEP PRICE FOR THE PROPOSED CONSULTATION PROCESS.

IT NO LONGER WILL BE ABLE TO COUNT UPON HAVING A NATIONWIDE NETWORK OF STATE AND AREAWIDE CLEARINGHOUSES TO HELP COORDINATE ITS FAR-FLUNG PROJECTS. ANY STATE THAT OPTS OUT OF THE PROCESS, AS IT MAY DO, WILL EFFECTIVELY DISENFRANCHISE NOT ONLY ITS STATE CLEARINGHOUSE, BUT ALSO ITS AREAWIDE CLEARINGHOUSES AND LOCAL GOVERNMENTS AS WELL. IN SUCH STATES, THERE SIMPLY WILL BE NO PROCEDURES AVAILABLE FOR INTERGOVERNMENTAL CONSULTATION AND COORDINATION, AND ANY COMMENTS THAT MIGHT BE MADE WOULD NOT MEET THE CRITERIA GIVING THEM ELIGIBILITY FOR "ACCOMMODATION" BY THE FEDERAL AGENCIES.

ANOTHER PRICE THAT FEDERAL AGENCIES WILL HAVE TO PAY IS ADMINISTRATIVE COMPLEXITY. THE PURPOSE OF E.O. 12372 AND THE PROPOSED REGULATIONS IS TO ALLOW DIVERSITY AMONG THE STATES. THIS MEANS THAT THERE COULD BE UP TO 50 DIFFERENT CONSULTATION PROCESSES FOR EACH FEDERAL AGENCY TO COPE WITH. FOR EXAMPLE, ANY GIVEN FEDERAL-AID PROGRAM OR DIRECT ACTIVITY OF A FEDERAL AGENCY MAY BE REVIEWED AND COMMENTED UPON IN SOME STATES, BUT NOT IN OTHER STATES. THUS, SOME PROPOSALS COULD MOVE AHEAD WITHOUT INTERGOVERNMENTAL CONSULTATION WHILE OTHERS OF THE SAME TYPE WOULD NEED TO WAIT FOR STATE RESPONSES. IT IS UNCLEAR WHETHER STATES WILL BE ALLOWED TO MAKE OTHER CHANGES--SUCH AS A LENGTHENING OF THE TIME ALLOWED FOR REVIEWS--BUT IF THEY COULD, THE FEDERAL AGENCIES WOULD HAVE TO

ADJUST TO THESE VARIATIONS AS WELL.

FINALLY, THERE IS A PRICE TO BE PAID BY ALL PARTICIPANTS. THE 30 DAYS ALLOWED FOR CONSULTATION IS MUCH TOO SHORT FOR EFFECTIVE INTERGOVERNMENTAL CONSULTATIONS--ESPECIALLY WITH THE ADDED NECESSITY FOR STATES TO RESOLVE ALL DIFFERENCES OF OPINION WITHIN THE STATE.

MUCH OF THE SUCCESS OF THE A-95 PROCESS HAS BEEN ATTRIBUTABLE TO ITS THREE-STAGE PROCESS. THE FIRST 30-DAY STAGE HAS BEEN FOR AN EARLY NOTIFICATION OF INTENT TO MAKE A FORMAL PROPOSAL. AT THIS STAGE, ANY SERIOUS OBJECTIONS CAN BE REGISTERED BEFORE THE FINAL SHAPE OF THE PROPOSAL IS SET. THE SECOND STAGE HAS BEEN AN INDEFINITE PERIOD OF TIME FOR NEGOTIATING DIFFERENCES OF VIEWS AMONG AFFECTED PARTIES. THE THIRD AND FINAL STAGE HAS BEEN 30 DAYS FOR ALL PARTIES TO DEVELOP COMMENTS ON THE FORMAL PROPOSAL. IF DIFFERENCES OF OPINION STILL EXIST AT THIS THIRD STAGE, MULTIPLE VIEWS HAVE BEEN SUBMITTED TO THE RESPONSIBLE FEDERAL AGENCY WHERE THE ULTIMATE DECISION HAS BEEN MADE.

ONLY THE FINAL 30-DAY PERIOD OF A-95 IS RETAINED IN THE PROPOSED FEDERAL AGENCY REGULATIONS, AND THAT PERIOD HAS THE ADDED REQUIREMENT TO INCLUDE A RESOLUTION OF ALL DIFFERENCES OF OPINION IN THE STATE BY THE STATE GOVERNMENT. UNLESS THE STATE CAN FIND A WAY--PROBABLY BY STATE LAW--TO KEEP APPLICATIONS FOR FEDERAL AID FROM BEING SUBMITTED TO A FEDERAL AGENCY UNTIL THE FIRST TWO STAGES

OF REVIEW HAVE BEEN COMPLETED (SO THE 30 DAYS ALLOWED BY THE FEDERAL REGULATIONS WILL NOT BEGIN BEFORE PRELIMINARY REVIEWS AND NEGOTIATIONS HAVE TAKEN PLACE), THE TIME ALLOWED FOR CONSULTATION IS LIKELY TO BE TOO SHORT FOR ANY SERIOUS COMPROMISE OF DIFFERING VIEWS.

IMPROVED REGULATIONS ARE NEEDED

AT LEAST THREE MAJOR IMPROVEMENTS ARE NEEDED IN THE PROPOSED FEDERAL REGULATIONS UNDER E.O. 12372 TO SATISFY THE RELEVANT REQUIREMENTS OF FEDERAL LAW AND CONCEPTS OF SOUND PLANNING.

FIRST, THE TIME PERIOD FOR CONSULTATION SHOULD BE EXTENDED AT LEAST TO THE STATUTORY 60 DAYS PROVIDED BY SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT. PREFERABLY, THE INDEFINITE SECOND-STAGE NEGOTIATING PERIOD ALSO SHOULD BE ALLOWED.

SECOND, THE REGULATIONS SHOULD REQUIRE STATE-DEVELOPED CONSULTATION PROCEDURES TO PROVIDE OPPORTUNITIES FOR REGIONAL PLANNING BODIES AND LOCAL GOVERNMENTS TO BE CONSULTED ABOUT ANY FEDERAL OR FEDERAL-AID PROGRAMS OF INTEREST TO THEM. THIS REQUIREMENT IS ESSENTIAL TO COMPLY WITH THE PROVISIONS OF BOTH SECTION 204 AND TITLE IV. RECOGNITION OF THIS PRINCIPLE IN THE

REGULATIONS WOULD SET MANY MINDS AT EASE AND BUTTRESS THE UNDERLYING CONCEPTS BEHIND EXISTING FEDERAL LEGISLATION.

THIRD, THE REGULATIONS SHOULD TAKE ADVANTAGE OF SECTIONS ONE AND SIX OF E.O. 12372 TO PROVIDE FEDERAL PROCEDURES ALLOWING INTERGOVERNMENTAL CONSULTATION TO TAKE EFFECT IN ANY STATE NOT CHOOSING TO SUBSTITUTE ITS OWN SYSTEM. THE PRESIDENT IS REQUIRED TO ISSUE REGULATIONS IMPLEMENTING THE TITLE IV PROVISIONS FOR CONSIDERING "ALL VIEWPOINTS--NATIONAL, REGIONAL, STATE, AND LOCAL" REGARDLESS OF HOW THE STATES MAY CHOOSE TO PARTICIPATE. THE PRESENTLY PROPOSED REGULATIONS ARE INOPERATIVE WITHOUT AN "OFFICIAL STATE SYSTEM". THEY SATISFY NEITHER THE LETTER NOR THE SPIRIT OF THE LAW.

APA URGES THAT THESE IMPROVEMENTS BE MADE BEFORE THE PROPOSED REGULATIONS TAKE EFFECT ON APRIL 30, 1983.

CONCLUSIONS

THE PLANNING AND MANAGEMENT STRUCTURE IN OUR FEDERAL SYSTEM OF GOVERNMENT CONTINUES TO EVOLVE. TODAY, ITS USEFULNESS IS MEASURED OFTEN IN TERMS OF HOW DIRECTLY IT RELATES TO THOSE THAT ARE ELECTED TO GOVERN.

WE NEED TO STRENGHTEN THAT SYSTEM'S BASIC GENERAL-GOVERNMENT BUILDING BLOCKS, SO THAT EACH--FEDERAL, STATE, REGIONAL AND LOCAL--CAN MORE FULLY

ESTABLISH GOALS AND TARGETS, IDENTIFY PRIORITIES, TAKE ACTION, EVALUATE ACTIVITIES AND RESULTS, AND CONTINUE THROUGH THE FUNCTIONING OF THAT PROCESS, WITH FRESHLY REAFFIRMED DECISIONS FOR NEW DETERMINATIONS.

A-95 HAD WITHIN ITS GRASP THE POTENTIAL TO MAKE THAT PLANNING AND MANAGEMENT STRUCTURE WORK BETTER. THE REVIEW TODAY, THESE HEARINGS, THE PRESIDENT'S EXECUTIVE ORDER, PROVIDE ANOTHER OPPORTUNITY TO DRAW ON FIFTEEN YEARS' EXPERIENCE AND TO REFORM THAT PROCESS OF INTERGOVERNMENTAL RELATIONSHIPS AND COORDINATION IN THE INTEREST OF CORRECTING ITS INADEQUACIES AND, KEYING INTO THE INTERGOVERNMENTAL RELATIONSHIPS, THE DEMANDS OF THE 80s.

APA'S POLICIES STATE THAT:

> CURRENT CONDITIONS SUCH AS RAPID TECHNOLOGICAL CHANGE, THE ECONOMY'S IMPASSE, THE CHANGING DEMOGRAPHY OF THE NATION, A WEAKENING STRUCTURE OF HUMAN SERVICES SUPPORT, THE DETERIORATION OF THE NATION'S INFRASTRUCTURE, AMERICA'S CHANGING PLACE IN THE WORLD SCENE, AND THE APPARENT CRISIS IN THIS NATION'S INSTITUTIONAL ARRANGEMENTS AND CAPACITIES TO DEAL WITH THESE CONDITIONS, UNDERSCORE THE URGENCY FOR A NATIONAL STRATEGIC PLANNING SYSTEM.

INTEGRAL TO THE STRUCTURE AND EFFORT IS AN INTERGOVERNMENTAL RELATIONSHIP THAT WILL SEE:

- A FEDERAL LEADERSHIP THAT WILL, IN THE NATIONAL ITNEREST, STIMULATE, ENCOURAGE AND HELP SHAPE AN INTERGOVERNMENTAL CONSULTATION ENDEAVOR THAT SEES A VITAL STATE RESPONSIBILITY EXERCISED WITH NEEDED REGIONAL AND LOCAL PARTICIPATION.
- A FEDERAL LEADERSHIP THAT WILL, IN THE NATIONAL INTEREST, SEE TO THE MONITORING AND PERIODIC ASSESSMENT OF THESE EFFORTS TO ASSURE, NOT ONLY THAT THE OBJECTIVES OF CONGRESSIONAL ACTIONS ARE BEING MET, BUT ALSO THAT THIS IS BEING DONE EXPEDITIOUSLY, EFFICIENTLY AND WITH CORRECTIVE ACTION TAKEN FROM TIME TO TIME ACCORDINGLY AND CONSISTENT WITH THOSE OBJECTIVES.
- A STATE LEADERSHIP THAT ACKNOWLEDGES THIS IMPORTANT RESPONSIBILITY AND POSITIONS ITSELF WITH ITS STATE PLANNING ACTIVITY TO PROVIDE THE CALLED-FOR DIRECTION AND FRAME OF REFERENCE FOR THE DESIRED INTERGOVERNMENTAL CONSULTATION.
- A REGIONAL AND LOCAL GOVERNMENT CAPACITY TO PLAN, INTERACT, NEGOTIATE, ACHIEVE A CONSENSUS AND PRESENT A VIEW AND JUDGMENT WHICH WARRANTS ATTENTION AND ACCOMMODATION IN THE STATE AND FEDERAL GOVERNMENT CONSIDERATION AND DISPOSITION OF PROJECT PROPOSALS.

MR. CHAIRMAN, AS I SEE IT TODAY, THAT IS THE PLANNING AND MANAGEMENT FRAMEWORK WITHIN WHICH INTERGOVERNMENTAL RELATIONS IN THE UNITED STATES MUST OPERATE.

THANK YOU.

REGION 5
REGIONAL
DEVELOPMENT
COMMISSION

611 Iowa Avenue, Staples, Minnesota 56479 (218) 894-3233
KATHY GAALSWYK, Executive Director

TESTIMONY OF
DAVID LOCH
COUNCILMAN OF LAKE SHORE

ON BEHALF OF
CASS COUNTY MUNICIPALITIES
REPRESENTATIVE ON THE
REGION 5 REGIONAL DEVELOPMENT COMMISSION

BEFORE THE
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS
UNITED STATES SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

MARCH 3, 1983

Serving Local Government in Cass, Crow Wing, Morrison, Todd, & Wadena Counties

Mr. Chairman, members of the Subcommittee on Intergovernmental Relations, thank you for the opportunity to testify on behalf of the small cities of Cass County Minnesota on Executive Order 12372 and the proposed regulation for its implementation.

My name is David Loch; I am a councilman for the City of Lake Shore, Minnesota, and currently serve as Executive Secretary/Central Services Coordinator for Morrison County. I also represent the fourteen cities of Cass County on the Region 5 Regional Development Commission, the designated clearinghouse for Cass, Crow Wing, Morrison, Todd and Wadena Counties.

In the local governments I represent, it would be fair to say that most of our troublesome problems are very parochial. There are times when actions by the County Board of Commissioners or surrounding Town Boards cause us some consternation. It's quite obvious, however, that it happens when there is a lack of communication. The A-95 review process has averted that problem when there is federal or state program intervention. Communication of information is one of the more positive features of A-95. We like to know what is going on in the area around us, particularly if there is potential for impact in our city.

The county's proposal to rebuild bridges or roads leading to our city, its intent to use Housing and Urban Development funds for housing rehabilitation, the development of recreational trails are examples of federal and state funded programs affecting the citizens in Lake Shore. A-95 review has not only informed us about what the County intends to do, it also has given us the opportunity to offer our comments and suggestions.

In Minnesota, we are fortunate that the present and past administrations have included programs, projects and services funded solely

BY THE STATE IN THE REVIEW PROCESS. THE RESULT IS A MUCH MORE COMPREHENSIVE OVERVIEW OF DEVELOPMENT EFFORTS EXTERNAL TO OUR CITY.

VERY RECENTLY, WE REVIEWED A SERIES OF APPLICATIONS FROM THE GOVERNOR'S COUNCIL ON RURAL DEVELOPMENT. THREE OF THOSE APPLICATIONS INTENDED TO OFFER TRAINING AND INSTRUCTIONAL COURSES ON FARM MANAGEMENT, ALL WITH A LITTLE DIFFERENT PERSPECTIVE. ALTHOUGH NO OFFICIAL ACTION HAS BEEN TAKEN BY THE REGIONAL CLEARINGHOUSE AS OF THIS DATE, MY COMMENTS POINTED OUT THE OVERLAP AND DUPLICATION.

PINE RIVER AND CHICKAMAW BEACH, CITIES NORTH OF US, PROPOSED TO CREATE A SANITARY DISTRICT WHICH EXT SOMEWHAT BEYOND THEIR INDIVIDUAL BOUNDARIES. THE SURROUNDING TOWNSHIPS OBJECTED BECAUSE THEY BELIEVED ALL THEIR CITIZENS WOULD BE TAXED FOR THE SERVICE WITHOUT BENEFIT TO THE ENTIRE TOWNSHIP. THE TOWNSHIP COMMENTS PROMPTED A CONSULTATION WHICH RESOLVED THE PROBLEM AND GENERATED WIDE SUPPORT FOR THE PROJECT.

PERHAPS A MORE INDIRECT BENEFIT OF A-95 REVIEW AND THE REDUCED FUNDING LEVELS OF THE FEDERAL AND STATE AGENCIES IS THE RECOGNITION, BY LOCAL UNITS, OF THE IMPORTANCE OF STRATEGIC PLANNING, TARGETING AREAS OF GREATEST NEED, AND ANTICIPATING FUTURE REVENUE RESOURCES. THE TREND IS IN THAT DIRECTION TODAY. RECOGNITION OF THOSE STRATEGIES AT ALL LEVELS OF GOVERNMENT IS THE ONLY WAY TO MAKE WISE USE OF INCREASINGLY LIMITED RESOURCES.

ON THE OTHER SIDE OF THE COIN, A-95 REVIEW HAS UNDOUBTEDLY ADDED TO THE WEIGHT OF BUREAUCRACY. IT IS ANOTHER STEP IN THE APPLICATION PROCESS AND CAN INVOLVE MANY PEOPLE AND LEVELS OF GOVERNMENT. IN MOST CASES, IT IS PROBABLY NOT NECESSARY TO EXTEND THE REVIEW TO ALL PROGRAMS, ESPECIALLY WHERE IMPACT IS VERY CONFINED. NOW THAT WE HAVE MORE HINDSIGHT, IT IS EASY TO SAY THAT WE SHOULD HAVE BEEN MORE SELECTIVE OR CAREFUL ABOUT THE EXTENT OF THE REVIEW PROCESS.

Another problem has carried through the years in A-95 review. In the early days, some federal agencies chose to ignore the process. After it was mandated for more programs in 1976, those same agencies continued their indifference by accepting the process, but ignoring the comments.

The clearinghouses were not without fault themselves. Too many times comments were made because of local political motivations rather than the merits or demerits of programs based on sound criteria or development strategies. Decisions were made without adequate knowledge or understanding of programs.

There is also the prevailing problem of people not understanding the A-95 review process.

These concerns are raised only because they need to be addressed in new federal and state review systems currently being developed in response to Executive Order 12372. In many ways the Executive Order is a drastic departure from the old A-95 review system. On the positive side, it will give state and local officials the authority to decide which proposed federal actions will be subject to review, thus avoiding unnecessary bureaucratic red-tape. Furthermore, as federal and state grant-in-aid programs evolve, there appears to be more flexibility for adaptation to changing conditions than existed under OMB Circular A-95.

From a local perspective, it is always our concern that decisions be made as close to home as possible. We Minnesotans are fortunate that the clearinghouse function is established by law in the Regional Development Commissions , organizations controlled by local elected officials.

WITH THAT IN MIND, I FEEL CONFIDENT THAT WE HAVE THE OPPORTUNITY FOR LOCAL IMPACT ON PROJECTS THAT AFFECT MY CITY. IT APPEARS THAT *THE MECHANISM FOR LOCAL REVIEW IS* ALREADY IN PLACE.

WHAT CONCERNS ME MOST ABOUT THE EXECUTIVE ORDER IS THE SINGLE POINT OF CONTACT WHICH ELIMINATES THE DIRECT COMMUNICATION BETWEEN THE CLEARINGHOUSE AND THE FEDERAL AGENCIES. THE REVIEWS SUBMITTED BY LOCAL OFFICIALS THROUGH THE REGIONAL CLEARINGHOUSE MIGHT LOSE THEIR IMPACT WHEN MELDED WITH COMMENTS FROM OTHER AREAS. THIS STRENGTHENS THE STATE'S ROLE AT THE EXPENSE OF LOCAL VIEWPOINTS.

THE SINGLE POINT OF CONTACT SERVES NO PURPOSE IN MINNESOTA BECAUSE THE REGIONAL DEVELOPMENT ACT, PRESUPPOSES THE EXISTENCE OF REGIONAL CLEARINGHOUSES. TO INCREASE THE STATE'S RESPONSIBILITY AS A SINGLE POINT OF CONTACT DUPLICATES A PROCESS ALREADY PRESENT AND INDEED, IS AN ADDED EXPENSE TO THE STATE.

ANOTHER CONCERN IS THE TIME PERIOD IN WHICH PROPOSED FEDERAL ACTIONS CAN BE REVIEWED. ALTHOUGH FINAL REGULATIONS HAVE NOT BEEN ISSUED, PRELIMINARY INDICATIONS ARE THAT THIRTY DAYS IS ALLOWED FOR COMPLETION OF REVIEWS UNLESS THE TIME PERIOD IS EXTENDED BY THE FEDERAL AGENCIES. I WOULD NOT BE CONCERNED ABOUT THIS TIME PERIOD IF SOME SORT OF EARLY WARNING SYSTEM WERE POSSIBLE. THIS WOULD REQUIRE THAT FEDERAL AGENCIES PROVIDE ADVANCE INFORMATION, THAT IS, INFORMATION ON THE INTENT OF AGENCY PROGRAMS PRIOR TO THE BEGINNING DATE OF THE REVIEW PROCESS. IF THIS IS CONTRARY TO THE INTENT OF THE EXECUTIVE ORDER, IN REDUCING FEDERAL INVOLVEMENT, THEN THE THIRTY DAY REVIEW PERIOD IS NOT ADEQUATE. MEETING SCHEDULES, TIME FOR LOCAL CONSULTATION, AND RESOLUTION OF DISCREPANCIES BETWEEN REGIONAL AND STATE COMMENTS WILL DEMAND MORE THAN A THIRTY DAY REVIEW PERIOD.

AS POINTED OUT EARLIER, MANY, EVEN SMALLER, LOCAL UNITS OF GOVERNMENT ARE SEEING THE NEED FOR STRATEGIES, LONG RANGE PLANNING. WE HAVE HEARD OF NEGOTIATED INVESTMENT STRATEGIES IN MINNESOTA; MANY REGIONAL COMMISSIONS, INCLUDING OUR OWN, HAVE INVESTMENT STRATEGIES; AND IN LITTLE OLD LAKE SHORE, POPULATION 600, WE HAVE A FIVE YEAR CAPITAL IMPROVEMENTS PROGRAM AND A 20 YEAR COMPREHENSIVE DEVELOPMENT FRAMEWORK. HOW WILL THE NEW REVIEW SYSTEM ENSURE RECOGNITION AND AID IN IMPLEMENTATION OF THESE LOCAL PLANS AND STRATEGIES? IS IT THE INTENT OF THE EXECUTIVE ORDER AND THE NEW FEDERALISM TO WITHDRAW FROM ALL INVOLVEMENT WITH LOCAL GOVERNMENT, OTHER THAN GRANTS-IN-AID?

DOES THE NEW FEDERALISM AND REVIEW SYSTEM ALLOW FOR FEDERAL INTERAGENCY COOPERATION WITH LOCAL OR AREAWIDE ENTITIES IN FULFILLMENT OF THOSE PLANS AND STRATEGIES?

IS THE NEW SYSTEM GOING TO ALLOW THE STATES TO TARGET FEDERAL RESOURCES TO AREAS OF GREATEST NEED?

THESE ARE QUESTIONS FOR WHICH WE NEED ANSWERS IN ORDER TO ADEQUATELY INFLUENCE DECISIONS AT THE STATE LEVEL REGARDING THE EXECUTIVE ORDER.

WHATEVER POSITION WE MIGHT INDIVIDUALLY HAVE TAKEN -- THAT A-95 REVIEW WAS FOR THE MOST PART A SUCCESS OR A FAILURE -- IT IS CERTAIN THAT WE CANNOT ACT SEPARATELY AND INDEPENDENTLY OF EACH OTHER IN THE VARIOUS LEVELS OF GOVERNMENT. IF THE FEDERAL GOVERNMENT CHOOSES TO SET NATIONAL DOMESTIC OBJECTIVES, THERE WILL BE IMPACTS AT THE LOCAL LEVEL. THE DECISIONS AT THE LOCAL LEVEL HAVE THEIR AGGREGATE IMPACTS ON THE NATION AS A WHOLE.

I SAY THIS NOT BECAUSE I SUPPORT INCREASED DEPENDANCE ON FEDERAL PROGRAMS, RATHER I SEE THE OPPORTUNITY FOR STRONGER LOCAL DECISION MAKING AND THEREFORE A BETTER MODE OF COOPERATION. TO THAT EXTENT, THE GOALS OF THE INTERGOVERNMENTAL COOPERATION ACT WOULD BE ACHIEVED.

THANK YOU FOR THE OPPORTUNITY TO PRESENT A LOCAL PERSPECTIVE ON THIS ISSUE AND RAISE QUESTIONS REGARDING THE IMPLEMENTATION OF EXECUTIVE ORDER 12372.

STATEMENT OF THE HONORABLE SCOTT FOSLER, COUNCILMAN, MONTGOMERY COUNTY, MARYLAND, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES (NACo), BEFORE THE SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS, COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE, ON EXECUTIVE ORDER 12372 - INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS, WASHINGTON, D.C., MARCH 3, 1983.

CHAIRMAN DURENBERGER, AND DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE, MY NAME IS SCOTT FOSLER, I AM AN ELECTED COUNTY COUNCILMAN FROM MONTGOMERY COUNTY, MARYLAND, AND I SERVE AS CHAIRMAN OF THE INTERGOVERNMENTAL AFFAIRS AND LOCAL DETERMINATION STEERING COMMITTEE, THE POLICY COMMITTEE CHARGED TO DEVELOP POLICY RECOMMENDATIONS ON MATTERS DEALING WITH INTERGOVERNMENTAL CONSULTATION AND REGIONAL COOPERATION. I AM DELIGHTED TO PRESENT THE VIEWS OF THE NATIONAL ASSOCIATION OF COUNTIES* (NACo) ON EXECUTIVE ORDER 12372, INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS. WE APPRECIATE THIS OPPORTUNITY TO PRESENT THE COUNTY VIEWPOINT AND OFFER OUR RECOMMENDATIONS FOR CONSIDERATION OF THE OFFICE AND MANAGEMENT AND BUDGET AS THEY MOVE TOWARD IMPLEMENTATION OF THIS NEW ORDER.

BEFORE I BEGIN, MR. CHAIRMAN, I WOULD LIKE TO EXTEND THE APOLOGIES OF OUR FOURTH VICE PRESIDENT, COMMISSIONER JOHN HORSLEY OF KITSAP COUNTY, WASHINGTON. IN PREPARATIONS FOR THIS HEARING, JOHN HAD HOPED TO APPEAR BEFORE THE COMMITTEE TO RELATE HIS OWN PERSONAL EXPERIENCES. UNFORTUNATELY, COMMISSIONER HORSLEY WAS NOT ABLE TO BE HERE THIS MORNING. JOHN HAS SERVED ON THE GOVERNOR'S TASK FORCE TO IMPLEMENT THE ORDER, AND IS THE FORMER CHAIRMAN OF THE STATE'S CLEARINGHOUSE ADVISORY COUNCIL. WASHINGTON STATE HAS PUT TOGETHER A PRETTY IMPRESSIVE PLAN TO IMPLEMENT E.O. 12372. I ASK THAT MR. HORSLEY'S PREPARED TEXT BECOME PART OF THE OFFICIAL RECORD OF TODAY'S HEARING.

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*The National Association of Counties (NACo) is the only national organization representing county government in the United States. Through its membership, urban, suburban and rural counties join together to build effective, responsive county government.

The goals of the organization are to improve county government; to serve as the national spokesman for county government; to act as a liaison between the nation's counties and other levels of government and to finally achieve public understanding of the role of counties in the federal system.

IN GENERAL, SENATORS, THE NATIONAL ASSOCIATION OF COUNTIES SUPPORTS THE CONCEPTS EMBODIED IN THE EXECUTIVE ORDER. WE COMMEND THE ADMINISTRATION'S EFFORTS TO REDUCE THE BURDENSOME PAPERWORK AND ELIMINATE MANY OF THE PROBLEMS INHERENT IN THE OLD SYSTEM. THESE PROBLEMS WERE ADDRESSED IN TESTIMONY NACo PRESENTED TO THIS COMMITTEE LAST YEAR.

OUR STATEMENT DOES NOT ADDRESS THE LEGAL QUESTIONS CENTERING ON THE PROPOSED REGULATIONS AS THE NATIONAL ASSOCIATION OF REGIONAL COUNCILS (NARC) HAS PRESENTED A THOROUGH ANALYSIS FOR THE COMMITTEE'S CONSIDERATION. OUR TESTIMONY FOCUSES PRIMARILY ON INTERGOVERNMENTAL CONCERNS REGARDING THE INDIVIDUAL STATE PROCESSES TO BE CREATED UNDER THE NEW ORDER. SPECIFICALLY, OUR STATEMENT ADDRESSES THE FOLLOWING:

1) THE REQUIRED CONSULTATION PROVISIONS;
2) THE LENGTH OF THE COMMENT PERIOD;
3) STATE ESTABLISHMENT OF A SINGLE POINT OF CONTACT AS REQUIRED BY THE OMB REGULATIONS;
4) PROGRAMS THAT SHOULD BE EXEMPTED UNDER THE PLAN; AND FINALLY,
5) THE IMPLEMENTATION AS IT RELATES TO A TRANSITION PERIOD AND TIME ALLOWED TO MOVE TOWARD A NEW SYSTEM.

COUNTIES RECOGNIZE THAT THE PROPOSED CHANGES TO A-95 WILL BE ONLY AS EFFECTIVE AS THE STATES ARE COMMITTED TO MAKING CHANGE. WE ARE NOT TOTALLY CONFIDENT THAT THE STATES WILL INDEED IMPLEMENT THIS ORDER IN THE SPIRIT THE ADMINISTRATION HAS INTENDED, OR HOPES. IN FACT, A RECENT SURVEY CONDUCTED BY NARC HAS SHOWN THAT NEARLY HALF OF THE STATES HAVE FAILED TO MOVE FORWARD AND INVOLVE LOCAL GOVERNMENTS IN AN EFFORT TO CHANGE THE PRESENT SYSTEM. WE EXPECT THAT MANY OF THESE STATES WILL NOT PROPOSE CHANGES BY THE IMPLEMENTATION DATE OF APRIL 30, 1983.

WE KNOW THAT AT LEAST TEN STATES HAVE MADE AN EFFORT TO BRING LOCAL GOVERNMENTS INTO THE PROCESS. THESE STATES INCLUDE MY OWN STATE, MARYLAND, MR. HORSLEY'S STATE, WASHINGTON, AS WELL AS MISSOURI, TEXAS AND TENNESSEE. IN FACT, I HAVE ATTACHED TO MY STATEMENT A COPY OF SHELBY COUNTY'S LETTER SENT TO GOVERNOR ALEXANDER WHICH COMMENDS THE STATE PLANNING OFFICE FOR THEIR COOPERATION WITH LOCAL OFFICIALS. NORTH CAROLINA'S PLAN WHICH INVOLVES LOCAL OFFICIALS, IS IN DRAFT FORM AND WAS SENT TO A NUMBER OF COUNTY OFFICIALS JUST THIS LAST WEEK. WE KNOW LITTLE OF THE ALASKA PLAN, BUT ARE ATTEMPTING TO DETERMINE WHICH LOCAL OFFICIALS IN THE STATE HAVE BEEN CONTACTED. ~~IN THE STATE OF GEORGIA, THE APDC ARE PRESENTLY RESPONSIBLE FOR A-95 REVIEWS. THE CHAIRMAN FOR THE NORTHEAST APDC, JEWEL JOHN COMMISSIONER FROM CLARK COUNTY (ATHENS) GEORGIA, TOLD US IN OUR STEERING COMMITTEE THIS PAST SUNDAY THAT SHE HAS BEEN TOLD NOTHING ABOUT ANY CHANGES IN THE REVIEW PROCESS. IN FACT, JUST TWO WEEKS AGO, JEWEL RECEIVED THE USUAL REPORT ON A-95.~~ IT IS CLEAR THAT THE STATES ARE NOT UNIFORMLY COMMITTED TO IMPROVING THEIR REVIEW PROCESS. THIS POINT EVEN FURTHER EXACERBATES THE INTERSTATE ISSUE ON HOW JURISDICTIONS INVOLVING MORE THAN ONE STATE WILL CONDUCT THE REVIEWS. CLEARLY, OMB WILL HAVE TO NEGOTIATE THIS CONFLICT. IT IS NACo'S RECOMMENDATION THAT IN SUCH INTERSTATE CONFLICTS, THE JURISDICTIONS INVOLVED MUST FOLLOW THE STATE'S PLAN THAT BEST MEETS THE TRUE SPIRIT OF THE EXECUTIVE ORDER, IN PARTICULAR, THEY SHOULD USE THAT PROCESS THAT ELIMINATES THE PAPERWORK BURDEN; STREAMLINE THE PROCESS; GIVES MORE FLEXIBILITY AND CHOICES TO THE LOCAL JURISDICTIONS; AND REQUIRES CONSULTATION WITH AFFECTED LOCAL GOVERNMENTS.

CONSULTATION PROVISIONS

SENATORS, WHILE THE ORDER REQUIRES CONSULTATION WITH LOCAL GOVERNMENTS, THE SINGLE STATE CONTACT NOW REQUIRED BY OMB REGULATION RAISES SERIOUS CONCERNS THAT THE CONSULTATION PROCESSES ARE INDEED TRUE CONSULTATIONS.

TO RESPOND TO OUR CONSULTATION CONCERNS, WE RECOMMEND THAT :

(1) THE STATES SHOULD SET UP ANY PROCESS ALLOWABLE UNDER STATE LAW TO SEEK OUT LOCAL GOVERNMENT COMMENTS, PROVIDED THE PROCESS HAS MADE AN EFFORT TO RECEIVE LOCAL VIEWS. WE DO NOT CONSIDER ADVISORY BODIES WITH A DISPROPORTIONED REPRESENTATION OF STATE VERSUS LOCAL OFFICIALS TO FULFILL THIS REQUIREMENT.

(2) ONCE THE STATE PROCESS FOR CONSULTATION, AS WELL AS THE ENTIRE STATE PROCESS FOR IMPLEMENTATION OF THE ORDER, HAS BEEN DRAFTED IT SHOULD BE PUBLISHED OR SENT THROUGH WHATEVER PUBLIC COMMENT PROCESS THE STATE OPERATIONS PROCEDURES PROVIDE, SUCH AS STATE ADMINISTRATIVE PROCEDURES ACTS (APA'S).

(3) WHEN EACH STATE SUBMITS ITS ASSURANCE THAT IT HAS CONSULTED WITH LOCAL GOVERNMENTS, THE STATES SHOULD ALSO SUBMIT A SIGNED AGREEMENT BY THE LOCAL ELECTED OFFICIALS PARTICIPATING IN THE PROCESS, AND THE STATE LOCAL GOVERNMENT ORGANIZATIONS OF ELECTED OFFICIALS THAT THE CONSULTATION PROCESS ESTABLISHED DOES MEET THE INTENDED NEED. THE AGREEMENT SHOULD STATE THAT THE SINGLE COMMENT FLOATING TO THE FEDERAL LEVEL SHOULD HAVE ATTACHED ANY MINORITY VIEWS BY THE AFFECTED LOCAL GOVERNMENTS.

LENGTH OF COMMENT PERIOD

THE COMMENT PERIOD UNDER THE NEW REGULATIONS IS TOO SHORT. WE RECOMMEND AT LEAST 45 DAYS AS A MINIMUM. COMMENTS SHOULD BE ACCEPTED UP TO SIXTY DAYS. IN CASES OF INTERSTATE REVIEWS, WE RECOMMEND A MINIMUM OF AT LEAST SIXTY DAYS.

IN ADDITION TO THE LENGTH OF TIME ALLOWED, NACo WISHES TO RAISE OUR CONCERN THAT ANY INACTION BY THE STATE TO PROCESS THE REVIEWS AND FORWARD THEM TO THE FEDERAL AGENCY MAY CAUSE "A POCKET VETO" SO TO SPEAK. STATES MUST BE REQUIRED TO FILE COMMENTS BY THE NECESSARY DATES, AND FAILURE TO RESPOND WITHIN THAT TIME ALLOWANCE CANNOT BE USED BY AN AGENCY TO REFUSE OR TERMINATE FUNDS. OUR CONCERN RISES FROM THE POSSIBLE USE OF THIS TECHNIQUE AS A TOOL FOR POLITICAL SANCTIONS BY THE STATE FOR FAVORITE VERSUS NOT SO FAVORITE SONS.

SINGLE STATE CONTACT

THE SINGLE STATE CONTACT REQUIREMENT HAS RAISED SERIOUS CONCERNS AMONG A NUMBER OF COUNTY OFFICIALS, AND REMAINS THE ONE ISSUE OF MOST CONCERN TO NACo. IN NEARLY HALF OF THE STATES WHO HAVE NOT ATTEMPTED TO CHANGE A-95, WE FEAR THAT THIS REQUIREMENT WILL CLOSE OUT MANY LOCAL OFFICIALS FROM THE PROCESS. IT COULD SERIOUSLY HAMPER ANY ATTEMPT FOR A CHANGE IN THE FUTURE. EVERY ASSURANCE MUST BE MADE THAT THE STATES SINGLE CONTACT FORWARDS THE REVIEWS THAT TRULY REPRESENT STATE AND LOCAL GOVERNMENT OFFICIAL VIEWS. THE SUCCESS OF THE ORDER WILL REST MOST ASSUREDLY ON THE STATES EFFORT TO ENSURE THAT THE SINGLE CONTACT CONCEPT DOES NOT INADVERTENTLY CLOSE LOCALS OUT OF THE PROCESS.

PROGRAMS TO BE EXEMPTED

NACo DOES NOT HAVE A LIST OF PROGRAMS WHICH SHOULD BE EXEMPTED. WE DO BELIEVE THAT EACH STATE SHOULD HAVE THE OPPORTUNITY TO DEVELOP THEIR OWN LISTS. THIS PROVISION ALLOWS FOR THE DIFFERENCES AMONG GOVERNMENTS, AND THEIR AUTHORITIES, AS WELL AS ON A REGIONAL BASIS ON A STATE BY STATE BASIS. WE SUPPORT THE CONCEPT EMBODIED IN COMMISSIONER HORSLEY'S STATEMENT WHICH SUGGESTS THAT STATES DEVELOP AN A AND B LIST, ONE BEING PROGRAMS THEY DEFINITELY WILL INCLUDE UNDER THE PROCESS IMMEDIATELY, WHILE THE OTHER LIST WOULD INCLUDE OPTIONAL PROGRAMS THAT MAY OR MAY NOT BE REVIEWED DEPENDING ON FURTHER EXAMINATION OF BOTH FEDERAL AND STATE LAWS.

TRANSITION INTO THE PROGRAM AND IMPLEMENTATION DATE

MR. CHAIRMAN AND MEMBERS, WE STRONGLY BELIEVE THAT THE PROPOSED REGULATION SHOULD BE AMENDED TO TAKE EFFECT AT A LATER DATE. WE RECOMMEND USE OF THE NEXT FISCAL YEAR (SEPTEMBER 30, 1983). THIS WOULD ENHANCE TRANSITION. SOME OTHERS HAVE JUST BEGUN THEIR WORK DUE TO THE ADJOURNMENT DATES OF STATE LEGISLATIVE BODIES WHICH, BY STATE LAW, NEED TO BE INVOLVED IN THE PROCESS. OTHER STATES WERE NOT ABLE TO CALL TOGETHER ADVISORY BODIES TO ENSURE LOCAL PARTICIPATION UNTIL LATE LAST YEAR. THE DEADLINE DATE OF APRIL 30, 1983, ONLY SERVES TO IMPEDE THOSE STATES ATTEMPTING TO MEET THE TRUE SPIRIT OF THE LAW. FURTHER, THIS CHANGE WOULD ALLOW FOR THE RISE OF STATE ADMINISTRATIVE PROCEDURES REVIEWS AS WE HAVE RECOMMENDED.

CONCLUSION

CHAIRMAN DURENBERGER AND MEMBERS OF THIS COMMITTEE, THIS CONCLUDES NACo'S REMARKS. WE APPRECIATE THE OPPORTUNITY TO PRESENT OUR VIEWS AND LOOK FORWARD TO WORKING WITH OMB, AND WITH YOU, IN MAKING THE EXECUTIVE ORDER A TRULY COOPERATIVE AND CONSULTATION VEHICLE IT IS INTENDED TO BE. WE HAVE ATTACHED COPIES OF NACo'S COMMENTS TO THE OMB PROPOSED REGULATIONS AND WE WILL BE HAPPY TO ANSWER ANY QUESTION YOU MAY HAVE REGARDING OUR FORMAL REMARKS.

THANK YOU.

CITY OF MEMPHIS
AND
SHELBY COUNTY, TENNESSEE

RICHARD C. HACKETT
City of Memphis Mayor

WILLIAM N. MORRIS, JR.
Shelby County Mayor

February 3, 1983

The Honorable Lamar Alexander
Governor, State of Tennessee
State Capitol Building
Nashville, Tennessee 37219

Dear Governor Alexander:

This letter is to commend Mr. Mike Webb, of your State Planning Office, for his excellent, open and fair conduct of the January 25-26th meeting regarding implementation of Presidential Executive Order 12372. In addition, we are taking this opportunity to state our observations and recommendations pertaining to the importance of this implementation process.

OBSERVATIONS

(1) Since the 50 attendees of the meeting consisted of 34 state officials, 11 development district representatives, 3 local government officials and 1 representative each from TML and TCSA, we do not believe this meeting will satisfy the required consultation provisions of the Executive Order.

(2) Despite poor local attendance at the meeting, we plan to endorse the following consensus agreements reached by the participants at the meeting:

   a. Development districts and local governments (upon request) will be designated by the states as clearinghouses. Memphis and Shelby County, because of previous and existing joint clearinghouse activity, are already recognized by the state as a direct clearinghouse.

   b. Criteria for determining the state's official comments will include substantial reliance on the comments received from the clearinghouse where the proposed project has the "destination of greatest impact." In addition, the process for resolving comment disagreement will include: first, a phone conference; second, a meeting; and finally, state reference to any local conflicts which may remain with the state's comments after the negotiation process has ended.

RECOMMENDATIONS

(1) To meet and expedite the consultation requirements of the President's Executive Order, we urge the state to draft a formal agreement outlining the entire state process to implement Executive Order 12372. The agreement should be co-signed by the state, development districts, and local government clearinghouses participating in the process. The agreement could then form the basis for the Governor's Executive Order for implementing Executive Order 12372 and thereby establish a model precedent in state and local relations which would undoubtedly be duplicated throughout the nation.

(2) State plans, including those authorized by Executive Order 12372 to be simplified, consolidated or substituted; and state block grant plans and programs have a vital, substantial and significant impact on local communities and need to be included, without exception, in the list of plans and programs subject to review and comment. A list of federal programs which we believe needs to be subject to review and comment is also attached.

(3) The agreement between the state, development districts and local governments should include the following, in addition to the issues resolved by this letter and the meeting of January 25th:

   a. A statement certifying that clearinghouses will be forwarded proposals which appear on the state's review list and that clearinghouses will be allowed to make recommendations for revising the review list.

   b. Guidelines contained in OMB Circular A-95, Part I, Section 5 pertaining to the content of comments shall be the minimum criteria for comments under Tennessee's implementation process for Executive Order 12372.

(4) The state should recommend that all proposed federal regulations implementing Executive Order 12372 be changed to allow states at least a 45-day review period (60-day for interstate), with a 15-day extenuating circumstance extension option.

In summary and closing, discussions with other local governments and organizations representing local government, indicates there is widespread support for these observations and recommendations. Specific interest centers on the need to review state plans and projects, the importance of a state-local agreement, recognition of the local government option to become a clearinghouse and the process for resolving comment disagreement.

We trust you will accept these observations and recommendations in the spirit of intergovernmental cooperation you have so often eloquently advocated.

Sincerely,

Richard C. Hackett

Richard C. Hackett

William N. Morris, Jr.

RCH/WNMjr/sr

Attachments

cc: Richard Fulton, Mayor
Dwight Kessel, County Executive
Dalton Roberts, County Executive
Charles Rose, Mayor
Randy Tyree, Mayor
Mike Webb, State Planning Office

Senator DURENBERGER. Our last panel of witnesses will be representatives from State government. First to testify will be Ms. Cindy Rambo, director, Department of Economic and Community Affairs, State of Oklahoma; next will be Ms. Constance Lieder, secretary of State planning, Maryland; and the third will be Mr. George Coppenrath of Vermont, who is senior planner, Agency of Human Services in the State of Vermont, who will be discussing the consolidation of the State plans and how that process works in the great State of Vermont.

Welcome all of you. We have the 7-minute time limitation. Your statements will be made part of the record.

TESTIMONY OF CINDY RAMBO, DIRECTOR, DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS, STATE OF OKLAHOMA; CONSTANCE LIEDER, SECRETARY OF STATE PLANNING, MARYLAND; AND GEORGE COPPENRATH, SENIOR PLANNER, AGENCY OF HUMAN SERVICES, VERMONT

Ms. RAMBO. Thank you very much. It is a pleasure to be here. I appreciate the opportunity to address the committee.

I would start my remarks by noting that sometimes it is nice not to know that something couldn't be done. We didn't know it couldn't be done. So we started out to do it in Oklahoma. I think we are close to having accomplished coming up with a replacement for A–95. I would like to make some very brief remarks about the background that influenced the development of the replacement process in Oklahoma and then give you a few specifics about the process itself.

To explain the forces behind the State's development and replacement for A–95, it is necessary to mention significant events occurring in Oklahoma State government in 1981. In 1981 increased interest in and concern for Federal funds flowing into the State of Oklahoma was demonstrated by the State legislature through the passage of Senate bill 326. This legislation provided for the creation of a joint legislative committee with the authority to approve, disapprove, or recommend amendment of any application for Federal financial assistance or comprehensive plan by any State agency, board, or commission.

It also included the procedures by which the legislative committee would approve, disapprove or amend those applications. And it included utilization of the State clearinghouse system to receive agency notifications of intent to apply and to provide such information to the legislature. In the process of developing legislative oversight for Federal funds in the State of Oklahoma, the members of the legislature became more familiar with the activities performed by the State clearinghouse under OMB Circular A–95.

When the necessity arose for the State to develop its own process to replace A–95, it followed logically that the legislature would be involved. In the fall of 1982 the Subcommittee on Federal Funds of the Appropriations and Budget Committee of the Oklahoma House of Representatives provided a forum at which interested parties could present comments and recommendations on the development of the State process to replace OMB Circular A–95. Subsequently, the committee met on several occasions to discuss aspects of the legislation to create the new process.

Those meetings were attended by State agencies, representatives of the Oklahoma Municipal League, the State Regional Planning District Association, local nonprofit organizations, and others. The result of those meetings was the introduction of House bill 1188 on February 9, 1983. Since discussions are continuing between the executive and legislative branches and others, over certain aspects of the bill and since it is at this time in committee in the House, it is quite possible that the final version may differ from that provided and discussed here today.

There are some basic similarities between the proposed new process in Oklahoma and the previous Circular A–95. The State retains the notice of intent procedure and continues to allow a 60-day time period to complete the review process. The State will continue to use an SAI number to identify those applications to complete the required review, and continue to utilize the area clearinghouses. The State process mandates the review of certain direct development projects, similar to A–95 requirements and directs Federal agencies to provide the State with notice of action taken as well as directing Federal agencies to specifically address the State's concern when funding the project to which the State is making the response.

In addition, of particular interest to this subcommittee might be the provision for resolution of conflict. The State law in Oklahoma as drafted directs that conflict be resolved at the local level first. However, if at the local level the participants in the conflict are not satisfied with the decision that was made there, they have the prerogative to appeal that decision to the joint Legislative Committee on Federal Funds. The joint committee will hear testimony and make a recommendation to the Governor as to what the single State comments should be.

There are several other differences but in the interest of time I will submit those for the record.

Thank you.

Senator **Durenberger**. Thank you very much.

Ms. **Lieder**. Thank you, Mr. Chairman.

I will not go into everything in the statement. What I would like to do instead is to expand on some of the concerns that we have. Maryland does have a process going. We are trying to do all of those things that OMB has asked us to do and coordinate with the locals and include the regionals in our reviews.

But what I would like to talk about primarily is the issue of program coverage and exclusions from the other. The Executive order was issued on July 14, 1982, and the original timetable published by OMB said that those program coverages would be determined by the agencies by August 30. We have asked for those program coverages repeatedly from that time. OMB said they are coming, they are coming. OMB would let us know. I finally wrote a letter to OMB and attached to the back of our statement is a response from OMB that says program coverage will be available by mid-December.[1] As you know, those program coverages just came out with the regulations, and not all agencies have determined coverages yet.

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[1] See p. 179.

This business of consulting with local governments without that program knowledge is very difficult. We can't determine what ought to be covered and what ought not to be covered if we don't know our choices.

Then we have the real question about the issue of exclusions. There are not exclusions specifically in the Executive order. I think that is important to understand. The order is supposed to provide for coordination and review of Federal financial assistance and direct Federal development. That is also sometimes interpreted as saying Federal agencies shall provide consultation for any programs that require non-Federal funds or directly affect governments. In the July 14 factsheet which accompanied the Executive order there was a list of those programs that would be covered.

Covered programs would include grants in aid—in the catalog of Federal assistance—R&D programs which affect governments, loan and loan guarantees, property acquisitions and construction, changes in land use, licensing and permits, and planning requirements. The October 14 memo from OMB again says what is covered and the States are supposed to be able to select any Federal programs they want that fall within the range of direct Federal assistance or things which directly affect government.

The only exclusions that were mentioned were in the fact sheet published July 14. To be excluded were Federal regulations, budgets, direct financial payments to individuals, Federal financial transfers of block grants, and things affecting national security. But we find, when the regulations are published, that there are a number of exclusions that have worked their way into these regulations. These exclusions are of great concern to us. It seems to me that the individual agencies are deciding what the exclusions will be and it isn't really up to the States, or for that matter for anybody else, to have any input into what States will or won't be able to review.

In fact, these coverages proposed by agencies are excluding programs that were formerly covered by A–95. We find a list of reasons given such as a narrow definition of "directly affected by." Some agencies are excluding Federal financial assistance if it is given to a nongovernmental agency or entity and services to be performed by nongovernmental institutions. We are finding that research and development and demonstration grants are excluded, and a great number of things which we think are really directly relevant to most State and local governments.

I would like to review a couple of these briefly. HUD is proposing to exclude mortgage insurance, housing for elderly and handicapped, rent supplements, and the rehab program. If there is anything that affects local government it is housing development. The Department of Agriculture is proposing to exempt payments for cooperative forest research, rural electrification loans, education loans, soil surveys, soil conservation programs, rural abandoned mines programs, stabilization and conservation services, and forest grants. In Maryland, we have a very active program in agriculture and forest preservation. Federal activities in those areas are very important to us.

Commerce is excluding things that we think are important. Interior has yet even to publish what it is they will or will not include.

Senator DURENBERGER. How about EPA?

Ms. LIEDER. EPA is excluding research, development and demonstration grants and payments to nongovernmental entities. That is quite substantial.

Senator DURENBERGER. Thank you very much for that testimony. Mr. Coppenrath?

Mr. COPPENRATH. Mr. Chairman, thank you for inviting me to testify today. I have a written statement that I would like to make part of the record.

Vermont has been operating under rules that are surprisingly similar to those contained in section 2(d) of Executive Order 12372 and I hope our experience over the past few years of substituting, consolidating, and simplifying plans will be helpful.

I will try to touch on what we did in Vermont as well as some of the other States in the planning requirements reform project. We consolidated, simplified, and substituted Federal plans for vocational rehabilitation, child welfare, independent living, vocational rehabilitation for the blind and visually handicapped, maternal and child health, crippled children's services, and SSI disabled children's program into one plan document.

In addition, we made it a comprehensive plan for the complete State agency of human services, including all human service programs, both Federal and State. One point I would like to make here is that in doing so we have expanded the amount of information and the comparability of information for the State legislature, advisory groups, local officials, the general public, and others.

Some of the other States participating in the project were Illinois, North Carolina, West Virginia, Washington, Utah, and Missouri. One of the results of the project was that States could meet Federal planning requirements using their own planning processes and their own plans, then have those plans approved by the Federal agencies.

Two, it showed that paperwork savings and a reduction in administrative burden would result. And three, by diverting some of the time and effort that was formerly spent on compliance planning, States could improve their own planning and budgeting processes by focusing on real, substantive planning issues.

We found that categorical plans do not meet the management needs of States nor were they designed to. They were designed for a number of purposes. One was to allow Federal reviewers to review all of the States on a comparable basis to make sure that they comply with Federal regulations. A second was to provide consistent guidance to State officials producing those plans. That all makes sense from a Federal level but when you look at it from the State level, you have a lot of different Federal plans with different planning periods, different planning cycles, focusing on only one particular funding source, it is very difficult for people to see how one relates to another.

I think another point I would like to make is that you can accomplish consolidated planning without sacrificing accountability. Most people are concerned that where services are targeted for a particular group of persons, or services are designed to be delivered in a certain way, or specific, noneligible services should not be paid for with certain funds these legislated intentions should be honored.

For example, room and board, medical expenses, and direct payments to individuals are not allowed under some programs. All of these restrictive rules and regulations are still contained in laws and regulations and are not affected by the consolidated planning provisions. Section 2(d) applies only to the planning requirements, the processes and the documents themselves. I believe that a lot of the fears and concerns are groundless in terms of the States taking the money and redirecting funds to noneligible persons of services.

I have a suggestion that we found very helpful in the planning project, that the Office of Management and Budget and some of the executive agencies should have a single point of contact themselves for States to speak with in regard to how to implement these regulations for the State's benefit.

Senator **Durenberger**. We thought of that 1½ years ago.

Mr. **Coppenrath**. Another thing that is needed, I believe, is some sort of a clearinghouse function. We found that we did not need to rely 100 percent of the time on the Federal agencies for guidance, but we received much support and assistance from other States in the project.

So if there is a way of connecting States to States, that can only be done in a clearinghouse function here in Washington, as to what States are interested in the input, plans, consolidating, simplifying, or whatever, that State to State assistance could be very helpful.

I would like to conclude by explaining, as I mentioned earlier, why I was pleasantly surprised to see the words, "simplifying, consolidating, substituting" in section 2(d). I was aware that OMB, GAO, and other agencies had monitored the project and attended to some of our needs.

It appears that they have listened to what is happening. They have observed that States are in conflict and they have responded constructively. I hope they will go one step further and implement the clearinghouse recommendations also.

After all, any project that started with Secretary Califano in the Carter administration survived a change of Secretaries to Patricia Harris, and continued under Secretary Schweiker in the Reagan administration, proves that new ideas and commonsense are nonpartisan issues.

Senator **Durenberger**. Thank you very much for your testimony.

On the subject of consolidation and planning, would any of you have recommendations about other areas we have talked about, some of the HHS areas, any other types of planning and consolidation that OMB or the Congress should try to develop for the future? And the concept of consolidation of reports—do any of you have any thoughts on that? Maybe we can start with you.

Mr. **Coppenrath**. We successfully included block grant applications for all of the Human Services block grants in our last submission. We also included a child abuse grant application. What we plan to do in Vermont, through our State planning office, is notify all of the other departments within the State of the presence of the regulations in case they have been overlooked. In addition we will tell them of our experiences in the project and offer our assistance.

I don't claim to be an expert in all of the areas of Federal planning. But I think a lot of our experiences can be useful to other departments.

Senator **Durenberger**. Any other comments?

Ms. **Rambo**. I, too, have a problem being very specific about certain plans that can be consolidated, but would be very, very supportive of having the option of being able to consolidate plans.

I think it is an opportunity to provide better service.

Ms. **Lieder**. We will be looking to consolidate plans that we have mandated at the State level by our State laws with some Federal plans.

Senator **Durenberger**. One of the last witnesses mentioned the interstate dispute problem. Can any of you share with the subcommittee an example of a significant interstate dispute in which you have participated and then go on to say how this consultation process might be structured to create cooperation rather than conflict?

Do any of you have any real life experience in that?

Ms. **Lieder**. The only one I know about was between Virginia and the National Capital Planning Agency over height of buildings in Rosslyn, I guess.

Senator **Durenberger**. That would be a great one to use. You didn't participate in that?

Ms. **Lieder**. Only as kind of an oversight. We watched it.

Senator **Durenberger**. In case we ever get to Maryland.

Mr. **Coppenrath**. At one time the citizens of Vermont were very concerned when the former Governor of New Hampshire was trying to requisition nuclear armaments for their National Guard. [Laughter.]

Senator **Durenberger**. A couple of years ago we might not be laughing about it.

I am informed also that you all participated in a meeting yesterday hosted by OMB to exchange views on implementing this order at the State level. Do you think that that meeting is going to stimulate more creativity at the State level and initiate something that should be done on a continuing basis?

Ms. Rambo. I participated in the afternoon part of the meeting. There was considerable discussion among the State representatives who were there after the panel, exchanging ideas and requests for copies of the legislation that we had proposed. So I would say that anytime you get an opportunity to exchange how you are resolving problems, that you are making progress.

The problem with having the meeting in Washington is that due to budget constraints many States cannot travel to be here for it.

Ms. **Lieder**. I think that the issue of compliance is real. Our concern is not with compliance within the State, but what will happen if the Federal agencies do not comply. Who is going to tell them to be sure that they work with us and participate in whatever review process we put up? I think most of the regs say that if the agency doesn't comply, the State is invited to discuss the matter with the agency administrator. OMB has implied from time to time that they would take action if there was no compliance by the agency but there is nothing specific at this point.

We would very much like to see compliance addressed.

Senator **Durenberger**. I am going to end with one last question.

I don't know whether what I am seeing here on this panel is the tip of the iceberg, the good guys—nice and clean and all that sort of thing. I sense the fear that States are the bad guys, just waiting to descend on local governments and the intergovernmental system of cooperation, and OMB is the partner in that crime. [Laughter.]

What is your perception of the true picture, particularly of those State agencies? What can we expect from some of the people who aren't here today, who will have substantial responsibility as points of contact and conflict—resolvers?

Ms. **Lieder.** I cannot speak for other States. Obviously, Maryland has, I think, good relations with its local governments. It is often typical to cast the State in a bad light. But from a very practical standpoint, if we were to ignore our local governments, it would come back to haunt us in different ways. Local governments, if you don't provide a process for them, will find a process. There are State legislators who look at your budgets and if the local government is not accommodated, you will hear about it. We will hear about it in another way. I don't know what it is like in other States, but I would suspect it is the same process.

Senator **Durenberger.** Are some of the States not ready for this process? I don't know that any of the three of you testified on the point that others made, that either the comment period or the date for final adoption of the regulation has got to be extended until October 1. Is that an advisable step from your standpoint?

Ms. **Rambo.** We made a very informal survey using the OMB State contacts and found a majority of the States were in the process, but if I were asked to say, I would say that you would not find States offended by having it put off a while. It would help, I think, in many instances. In Oklahoma we would like to have a little more time to review the regs. That is one of our big problems.

Senator **Durenberger.** We were told Maryland is all ready to go. What is your view in the national sense, and in terms of Maryland?

Ms. **Lieder.** If we had to go, we would go. What we would go on is a Governor's Executive order establishing the process and then publish the regs on an emergency basis, April 29, or something of that sort. We would like to have much more time, particularly to review the Federal regs. know the programs, and establish what our coverage is going to be. We wish to at least try to get the Federal agencies to include things in their coverage that we and the locals would like to review.

Senator **Durenberger.** I read Mr. Wright's testimony very late last night after getting home. I recall in that testimony there was some indication that very little comment had come back during the comment period, but that they were advised that most of the comments usually come back in the last week. I wonder if OMB dealt with the fact that in the period from January 24 to today, March 3, there has been a whole lot of activity in the State governments around this country. There has been a whole lot of dealing with fiscal crises. There has been a whole lot of trying to figure out where the Federal Government is going to go, how that is going to impact on our intergovernmental system.

So perhaps the reason for the absence of comments is that the people that should be commenting have been very, very busy about other things. It might be well for OMB to think about that as part of the process.

The other thing, the point that you made, Ms. Lieder, that has been bothering us for some time: the exclusion problem. We tried to get a couple of agencies to come here today to talk with us about that problem. I am glad you raised it. They just refused to come.

So I understand that from your viewpoint—the viewpoint, I think, of all of you, if I heard your testimony correctly—that probably is an area that deserves looking at. If we are going to launch this process and do it right, not have it create some kind of intergovernmental problem within some of the states, that is a point that we need to study.

Does anyone else have any reaction to OMB's testimony, or any other comments that they would like to make now before we close the hearing?

Ms. **Rambo**. I would just make one more observation to reinforce our concern over the exclusions.

I have been talking to my staff who have been looking at the regs. They pointed out to me that of the 31 programs that HUD previously had covered under A–95, they now are excluding all but 8. We have some concerns about that. We would like some time to look it over carefully, maybe an opportunity to talk to some of our Senators and our Governor about some more input into what is excluded.

Senator **Durenberger**. You have got two great Senators. I am sure that they will see that your interests are taken care of.

Anybody else?

If not, I thank you very much for your efforts and your testimony and your replies.

[The prepared statements of Ms. Rambo, with attachments, Ms. Lieder, and Mr. Coppenrath follow:]

STATE OF OKLAHOMA
DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS
4545 N. LINCOLN SUITE 285 OKLAHOMA CITY, OKLAHOMA 73105 (405) 528-8200

CINDY RAMBO
DIRECTOR

TESTIMONY OF
CINDY RAMBO

Director of the Department of Economic and Community Affairs
State of Oklahoma
before the
Subcommittee on Intergovernmental Relations
United States Senate Committee on Governmental Affairs

March 3, 1983

Good morning. I'd like to thank the Chairman and members of the Subcommittee on Intergovernmental Relations for this opportunity to comment on Oklahoma's progress toward developing a state system to replace OMB Circular A-95.

My remarks are intended to provide a brief history of the project review and notification system in Oklahoma, an explanation of the circumstances that influenced the development of the replacement for OMB Circular A-95 and a brief description of the new process as it is currently proposed.

From the date of issuance of OMB Circular A-95 on July 24, 1969 until October 1, 1981, the State of Oklahoma followed the federally prescribed procedures for coordinating certain federally assisted programs and projects with state, regional and local plans with very little variation.

The only state-initiated change in this system during this twelve year period was achieved through the issuance of an Executive Order by then Governor David Boren on September 9, 1976 (Attachment 1). The Executive Order expanded the system by directing "all state agencies, departments, boards, commissions, universities and institutions to notify the State Clearinghouse at least 30 days in advance of their intent to file an application for federal assistance under any federal program not currently being reviewed under the provisions of Circular A-95, or their intent to request financial assistance from foundations, trusts or other similar funding sources."

The Executive Order further directed all state agencies, departments, boards, commissions, universities or institutions receiving official notice of action on any application for assistance to advise the State Clearinghouse of such action. In addition, the Executive Order required that one copy of all state plans prepared to meet federal program requirements be submitted to the State Clearinghouse prior to submission to a federal agency.

Just as the A-95 procedures in Oklahoma were very similar to those of other states, the major shortcomings of the system were not unique to this state. Primary among these shortcomings was a lack of concern on the part of some federal agencies for adherence to A-95 requirements which, in turn, fostered a disregard for the process by applicants; and a sense of futility on the part of those reviewing applications. Nevertheless, in Oklahoma, state and local officials are in general agreement that whatever its shortcomings, Circular A-95 is far preferable to having no review and comment at all.

To explain the forces behind the State's development of a replacement for the A-95 process, it is necessary to mention significant events occurring in Oklahoma state government in 1981.

In 1981, increased interest in and concern for federal funds flowing into the State of Oklahoma, was demonstrated by the State Legislature through the passage of Senate Bill 326 (Attachment 2).

This legislation provided for the following:

(1) the creation of a joint legislative committee with the authority to approve, disapprove, or recommend amendment of an application for federal financial assistance or comprehensive plan by any state agency, board or commission.

(2) procedures by which the legislative committee would approve, disapprove or amend applications.

(3) the utilization of the State Clearinghouse system to receive agency

notification of intent to apply for federal funds and to provide such information to the legislature.

This legislation was passed by the Oklahoma Legislature and became effective October 1, 1981. However, on May 28, 1982 the Attorney General of the State of Oklahoma ruled the section of the law providing for items (1) and (2) above unconstitutional (Attachment 3).

In their deliberations concerning the oversight of federal funds, members of the legislature became more familiar with the activities performed by the State Clearinghouse under OMB Circular A-95. When the necessity arose for the State to develop its own process to replace A-95, it followed logically that the legislature would be involved.

In the fall of 1982, the Subcommittee on Federal Funds of the Appropriations and Budget Committee of the Oklahoma House of Representatives provided a forum at which interested parties could present comments and recommendations on the development of the state process to replace OMB Circular A-95. Subsequently, the subcommittee met on several occasions to discuss aspects of legislation to create the new process. Those meetings were attended by state agencies, representatives of the Oklahoma Municipal League, the state regional planning district association and local non-profit organizations, among others.

The result of those meetings was the introduction of House Bill 1188 (Attachment 4) on February 9, 1983. Since discussions are continuing between the executive and legislative branches over certain aspects of the bill and since at this time the bill remains in committee in the house of origin, it is quite possible that the final version may differ from that provided and discussed here.

There are some similarities between the proposed new process in Oklahoma and the previous Circular A-95. The state will retain the notice of intent procedure and continue to allow a 60 day time period to complete the review process. The state will continue to use an "SAI" number to identify those applications that have completed the required review and continue to utilize the area clearinghouses.

The proposed state process mandates the review of certain direct development projects similar to the current A-95 requirement and directs federal agencies to provide the state with notice of action taken on applications as well as requiring the federal agency to specifically address the state's concerns when funding a project to which the state has made a negative response.

There are significant differences between the existing A-95 process and Oklahoma's plan. The proposed legislation does the following:

(1) requires "every state agency, board, commission, university and college, and every municipality, county government, other political subdivision, incorporated Indian organization, substate planning district, community action agency, and other designated community based organizations" to submit a notice of intent to request federal financial assistance under any federal assistance program," (emphasis added).

(2) requires state agencies, boards, commissions, universities and colleges, substate planning districts and community action agencies to file a notice of intent to request financial assistance from "foundations, trusts and other similar funding sources."

(3) requires that all notices go to the State Clearinghouse which will provide them to regional clearinghouses.

(4) requires a narrative addressing 3 specific questions be attached to the notice of intent.

(5) requires copies of all notices of intent and applications be provided to the Legislative Fiscal Office.

(6) authorizes a state agency (the Department of Economic and Community Affairs) to establish requirements for and to designate area clearinghouses.

(7) provides for an appeal to the Joint Legislative Committee on Federal Funds when a satisfactory resolution of conflicts cannot be reached and stating that the Joint Committee will make a recommendation for final resolution to the Governor.

(8) establishes the state's "single point of contact."

(9) requires notice to the State Clearinghouse of any official action taken by the funding agency regarding the application within 7 days of receipt of notice.

Testimony of Cindy Rambo

(10) requires that state agencies, boards, commissions and any other political subdivisions including their trusts make books and records relevant to applications or receipt of federal financial assistance available for examination by the State Clearinghouse.

The development of the process is by no means complete and the consultation with all interested parties continues. This review of the proposed legislation demonstrates the State of Oklahoma's intention to implement a process which will provide a more complete data base concerning federal funds in the state, which will identify and reduce duplication, and which will encourage coordination with established local, regional or state plans.

For the committee's information, a survey of fifty states, performed by my staff, February 22 and 23, 1983, is attached (Attachment 5). The survey contained four questions. A majority of states (29 or more) responded that they would:

(a) utilize the existing A-95 mechanism (30 states);

(b) enact the state's process through Executive Order (29 states);

(c) utilize appropriated state funds at the state level only (31 states);

(d) utilize regional planning organizations in the new system (36 states).

Thank you for the opportunity to appear before you today.

ATTACHMENT 1

FILED
SEP 6 [illegible]
JEROME W. BYRD
SECRETARY OF STATE

STATE OF OKLAHOMA
EXECUTIVE DEPARTMENT
OFFICE OF THE GOVERNOR

EXECUTIVE ORDER

PART I

WHEREAS, the Department of Economic and Community Affairs has been designated as the State Clearinghouse for the coordination of federally assisted projects and programs in accordance with the provisions of the Office of Management and Budget Circular A-95, which requires applicants requesting specified types of federal assistance to notify and provide certain information to the State and designated areawide clearinghouse of their intent to apply for assistance sixty (60) days prior to submitting applications to federal agencies, and specifies certain procedures for review and comment on proposed applications, and

WHEREAS, to achieve effective coordination and consistency in State Government operations and planning, it is essential that information on all applications for federal or other types of assistance henceforth be provided to the State Clearinghouse,

NOW, THEREFORE, I, DAVID L. BOREN, GOVERNOR of the State of Oklahoma, by the authority vested in me by Article VI, Sections 2 and 8 of the Constitution of Oklahoma, do hereby direct all State agencies, departments, boards, commissions, universities and institutions to notify the State Clearinghouse, at least thirty (30) days in advance of their intent to file an application for federal assistance under any federal program not currently being reviewed under the provisions of Circular A-95, or their intent to request financial assistance from foundations, trusts or other similar funding sources. In situations where thirty (30) days advance notification is impossible, notification will be provided as soon as the decision is made to prepare an application for financial assistance. Such notices shall be given in the case of all applications, contracts, agreements, or amendments thereto between any state agency, department, board, commission, university or institution thereof and any federal agency, or foundation, trust or similar funding source. Notification procedures prescribed by the State Clearinghouse pursuant to this directive shall be followed by all State entities.

FURTHER, I direct that any State agency, department, board, commission, university or institution receiving official notice of action on any application for assistance, shall, within seven (7) days of the receipt of such notice, advise the State Clearinghouse of such action.

PART II

WHEREAS, many federal programs require a state plan as a condition of federal assistance and because such state plans establish program guidelines and policy directions in various functional areas, it is essential that they be fully coordinated,

NOW, THEREFORE, I do further direct all State agencies, departments, boards, commissions, universities and institutions to file one copy of each state plan currently in effect with the Department of Economic and Community Affairs. Henceforth, each state plan or amendment thereto shall be submitted to the Department of Economic and Community Affairs prior to submission to a federal agency, in accordance with State Clearinghouse procedures.

PART III

To assist in the implementation of this Executive Order, I do hereby request each agency, department, board, commission, and institution head, as well as university president, to appoint a representative in matters relating to project notification and for state plans that are required pursuant to federal assistance programs.

All notifications, notices and plans submitted under the provisions of Parts I and II of this Executive Order, or under the provisions of Office of Management and Budget Circular A-95, shall be maintained in the files of the Department of Economic and Community Affairs where they shall be available for inspection as part of the public records of the State of Oklahoma and shall be maintained in a form suitable for analysis and inspection by the staff of the State Legislative Council.

This Executive Order supercedes all previous orders and directives in conflict herewith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 9th day of September, 1976.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

David L Boren

ATTEST:

Jerome W. Byrd
SECRETARY OF STATE

ATTACHMENT 2

An Act

ENROLLED SENATE
BILL NO. 326

BY: WATSON, RANDLE and COMBS
of the SENATE

and

TALLEY and DEATHERAGE of
the HOUSE

AN ACT RELATING TO STATE GOVERNMENT; AMENDING SECTION 1, CHAPTER 111, O.S.L. 1975, AS AMENDED BY SECTION 1, CHAPTER 175, O.S.L. 1979, SECTION 9, CHAPTER 244, O.S.L. 1977, AS AMENDED BY SECTION 5, CHAPTER 175, O.S.L. 1979 AND SECTION 12, CHAPTER 244, O.S.L. 1977, AS AMENDED BY SECTION 6, CHAPTER 175, O.S.L. 1979 (74 O.S. SUPP. 1980, SECTIONS 1521, 1533 AND 1536), WHICH RELATE TO THE DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS; CREATING THE JOINT LEGISLATIVE COMMITTEE ON FEDERAL FUNDS AND PRESCRIBING ITS FUNCTIONS AND RESPONSIBILITIES; REQUIRING CERTAIN COMMITTEE NOTIFICATION AND APPROVAL; ESTABLISHING A REVIEW PROCESS; PROHIBITING CERTAIN ACTS BY THE DIRECTOR OF STATE FINANCE UNTIL WRITTEN AUTHORIZATION IS RECEIVED; PROVIDING EXCEPTIONS; DEFINING TERMS; DELETING AND ADDING CERTAIN DEFINITIONS; ESTABLISHING A FEDERAL ASSISTANCE MANAGEMENT DIVISION WITHIN THE DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS AND PRESCRIBING ITS FUNCTIONS AND RESPONSIBILITIES; PROVIDING CERTAIN DIVISION NOTIFICATION PROCEDURES; REQUIRING ANNUAL AUDITS OF COMMUNITY ACTION PROGRAMS AND CHANGING DISTRIBUTION; DIRECTING CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. A. There is hereby created the Joint Committee on Federal Funds. The committee will consist of ten (10) members of the Oklahoma Legislature, five from each house, to be appointed every two (2) years by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairmen of the House of Representatives Committee on Appropriations and Budget and the Senate Committee on Appropriations will constitute four of

Correctly Enrolled: ____________, ________ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS the ten members. The Chairman and Vice Chairman of the Joint Committee on Federal Funds shall be the Chairmen of the appropriations committees of each house. Beginning October 1, 1981, the Chairman shall be from the Senate until the convening of the First Regular Session of the Legislature in January 1983, at which time the Chairmanship shall be assumed by the House of Representatives; thereafter, the Chairmanship shall alternate every two (2) years between the Senate and the House of Representatives, beginning with the convening of the First Regular Session of the Legislature. The Joint Committee on Federal Funds shall function as a joint committee of the Oklahoma Legislature when the Legislature is in session and when the Legislature is not in session. Each appointive member of said committee shall serve until his successor is appointed. Meetings of the committee shall be called by either the Chairman or Vice Chairman; provided, however, that the committee shall meet at least monthly. The presence of five (5) members of the committee shall constitute a quorum; provided, however, that the committee shall not take final action upon any state plan or any application for federal financial assistance unless a quorum is present and that any action taken by the committee shall be upon a majority vote of the committee members present.

B. The Joint Committee on Federal Funds shall have the following powers and responsibilities:

1. To review and make recommendations regarding state plans and applications for federal financial assistance; and

2. To recommend to the Oklahoma Legislature procedures to coordinate, report and track the effects of federal financial assistance and federal policy on Oklahoma state government.

Upon the request of either the Chairman or Vice Chairman of the Joint Committee, the Legislative Fiscal Office shall perform the duties requested by the Joint Committee. Members of the committee shall be reimbursed for authorized travel and expenses in the same

Correctly Enrolled: ____________, ________ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS manner as members of the committees of the House of Representatives and the Senate.

C. The committee shall have the authority to approve, disapprove or recommend amendment of an application for federal financial assistance or comprehensive plan by any state agency, board or commission, including constitutionally created agencies, boards or commissions. Action to amend or disapprove shall be provided to the Federal Assistance Management Officer and the state agency, board or commission applying for federal financial assistance by an official written communication from the committee. No agency, board or commission shall proceed to apply for federal financial assistance or expend federal block grant funds after action to amend or disapprove as provided in this section. If an agency, board or commission is requested to amend an application for federal financial assistance, a copy of the amended application for federal financial assistance shall be filed with the Legislative Fiscal Office no later than fourteen (14) calendar days after receipt of the request for amendment of the application. For good cause shown, the committee may grant a reasonable extension of that period, which extension period shall not exceed sixty (60) calendar days. The state agency, board or commission may not submit the application for federal financial assistance to the federal authority until the committee is satisfied that the required modifications recommended by the committee have been met. The application for federal financial assistance may be submitted only after the committee provides the state agency, board or commission and the Federal Assistance Management Officer an official written communication signed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate approving the amended application for federal financial assistance.

D. Failure of the committee to act on the notice of intention or to notify the state agency, board or commission that a recommendation to amend or disapprove is forthcoming within thirty (30) calendar

Correctly Enrolled: ________________, ________ *Chairman,* COMMITTEE ON ENGROSSED AND ENROLLED BILLS days from the date such notice of intention is filed with the Legislative Fiscal Office shall result in the approval of the notice of intention.

E. The committee shall hear any requests for modification or disapproval of an application for federal financial assistance. Requests for hearing shall be submitted to the Legislative Fiscal Office by the Federal Assistance Management Division; provided, however, that a state agency, board or commission may submit a request for hearing before the committee directly to the Legislative Fiscal Office.

F. Whenever the project is approved by the committee, the committee shall so notify the Speaker of the House of Representatives and the President Pro Tempore of the Senate, who shall send an official written communication to the requesting state agency, the Director of State Finance and the Federal Assistance Management Division that such project, notice of intention or amended application and the federal financial assistance requested have been approved and that the receipt and expenditure of funds have been authorized. All federal financial assistance received therein shall be subject to the normal financial procedures provided by Sections 41.1 through 41.41 of Title 62 of the Oklahoma Statutes.

G. The Director of State Finance shall not process any warrants or claims on any federal financial assistance received by a state agency, board or commission unless or until the Director of State Finance has received a written authorization from the Speaker of the House of Representatives and the President Pro Tempore of the Senate approving the federal financial assistance, or unless the application for federal financial assistance was submitted before October 1, 1981. The Director of State Finance shall immediately notify the Legislative Fiscal Office and the Federal Assistance Management Division when federal financial assistance is received by a state agency, board or commission in violation of any provision of this act.

H. The following types of federal financial assistance shall be exempt from the notification process:

1. Transfer payments to individual recipients;

2. Federal financial assistance to Indian tribes; and

3. Federal financial assistance to institutions under the jurisdiction of the Oklahoma State Regents for Higher Education.

I. It is further provided that if any of the requirements of this act are contrary to any of the terms of federal legislation or regulations under which monies are granted to the Oklahoma Employment Security Commission or under which disaster relief monies are granted to the Oklahoma Department of Civil Defense, such requirements may be suspended if the Commission and the Department file a report with the Joint Committee on Federal Funds containing specific documentation from the appropriate federal agencies which clearly delineates the basis for deviation.

SECTION 2. Section 1, Chapter 111, O.S.L. 1975, as amended by Section 1, Chapter 175, O.S.L. 1979 (74 O.S. Supp. 1980, Section 1521), is amended to read as follows:

Section 1521. For purposes of this act:

1. "Department" means the Department of Economic and Community Affairs;

2. "Director" means the Director of the Department of Economic and Community Affairs;

3. "Federal financial assistance" means any block grant program, loan, grant, subsidy, augmentation, advance, reimbursement or any other form of assistance made by the United States Government which exceeds Ten Thousand Dollars ($10,000.00); and

4. "Comprehensive plan" means an analysis of all information and alternatives to the future development of the state, including the specific plans and programs of state agencies, or outline for expenditure of block grant funds by state agencies.

Correctly Enrolled: ______, ______ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

SECTION 3. Section 9, Chapter 244, O.S.L. 1977, as amended by Section 5, Chapter 175, O.S.L. 1979 (74 O.S. Supp. 1980, Section 1533), is amended to read as follows:

Section 1533. A. There is hereby created within the Department of Economic and Community Affairs, the Federal Assistance Management Division which shall contain the State Clearinghouse. Every state agency, board and commission shall notify the Federal Assistance Management Division of their intent to file an application for federal assistance under any federal program or their intent to request financial assistance from foundations, trusts or other similar funding sources, along with a copy of the proposed application, not less than sixty (60) calendar days prior to submission of the final application to the funding source. In situations where sixty (60) calendar days' advance notification is impossible, notification shall be provided as soon as the decision is made by the agency, board and commission to prepare an application for financial assistance. Such notices shall be given in the case of all applications, proposals, contracts, supplements, agreements, modifications or amendments thereto between every state agency, board and commission and any federal agency or foundation, trust or similar funding source. Nothing in this section shall be construed to grant the Department the authority to disapprove such application.

B. The notice of intention shall have a one-page cover narrative attached that shall include:

1. A description of the objective of the program and how the program shall meet the stated objective;

2. A list of other state agencies, boards and commissions or other political subdivisions whose programs, services and responsibilities will be affected;

3. A statement of the intentions of the applicant should federal financial assistance for the program be reduced or terminated; and

4. A brief statement of requirements which acceptance of the federal financial assistance will obligate the State of Oklahoma or any agency, board or commission thereof.

C. The Federal Assistance Management Division shall provide a copy of the notice of intention received from the agencies, boards and commissions pursuant to subsection A of this section to the Legislative Fiscal Office.

D. Upon receipt of a notice of intention as required by subsection C of this section, the Legislative Fiscal Office shall refer such notice to the Joint Committee on Federal Funds.

E. Every agency, board or commission receiving official notice of action on any application for assistance shall, within seven (7) calendar days of the receipt of such notice, advise the Federal Assistance Management Division and the Legislative Fiscal Office of such action.

F. Every agency, board or commission requesting or receiving financial assistance pursuant to an application for participation in a federal grant or loan program shall make all books and records relevant to such participation available for examination by the Federal Assistance Management Division or the Legislature upon request.

G. Those notification procedures as prescribed by the Federal Assistance Management Division shall be followed by every state agency, board and commission in submitting the required information to the Federal Assistance Management Division and the Legislative Fiscal Office.

SECTION 4. The duties of the Federal Assistance Management Division are as follows:

1. To establish a central reporting and information service to keep the Governor, the agencies of the state and its subdivisions, and the Legislature informed about the applications for federal financial assistance programs, and current federal financial assistance programs in effect within the state;

Correctly Enrolled: ________, ________ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

2. To report to the Legislature monthly on federal financial assistance received by state agencies, boards and commissions;

3. To assist in the coordination of federal financial assistance programs that involve or are administered by more than one state agency, board or commission;

4. To summarize applications for federal financial assistance for distribution to the Legislature and the Governor submitted for review and comment;

5. To report, as requested by the Legislature or its committees, on the status and condition of federal financial assistance programs in the state; and

6. To report to the Legislative Fiscal Office any request for a legislative hearing on any state plan or application for federal financial assistance received during the review and comment period provided by this act.

SECTION 5. Section 12, Chapter 244, O.S.L. 1977, as amended by Section 6, Chapter 175, O.S.L. 1979 (74 O.S. Supp. 1980, Section 1536), is amended to read as follows:

Section 1536. The Legislature finds that the policy of the State of Oklahoma should be to insure that public funds, federal, state or local, should be expended only in the public interest and, that all nonprofit corporations chartered under the laws of this state, are required by virtue of such charter privilege to conduct their business in the public interest. It is therefore provided that all Community Action Program agencies, operating under the provisions of federal laws, rules and regulations, expending public funds pursuant thereto and enjoying the status of nonprofit corporations under the laws of the State of Oklahoma, shall submit all applications for public money, federal, state or local, directly to the State Clearinghouse within the Department in the same manner as required of public bodies in Section 1533 of this title. All Community Action Program agencies shall submit an annual independent and certified financial audit to the Department, the President Pro Tempore of the

Senate and the Speaker of the House of Representatives prior to the convening of each regular session of the Legislature. The Attorney General of the State of Oklahoma is authorized and directed to seek permanent revocation of the tax-exempt status of any Community Action Program agency which violates, circumvents or otherwise fails to comply with the provisions of this section.

SECTION 6. Sections 1 and 4 of this act shall be codified in the Oklahoma Statutes as Sections 452.7 and 1533.1, respectively, of Title 74, unless there is created a duplication in numbering.

SECTION 7. This act shall become effective October 1, 1981.

Passed the Senate the 28th day of May, 1981.

President of the Senate

Passed the House of Representatives the 16th day of June, 1981.

Speaker of the House of Representatives

Correctly Enrolled: ________, ________ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

ATTACHMENT 3

JUN 9 1982

JAN ERIC CARTWRIGHT
ATTORNEY GENERAL
STATE OF OKLAHOMA
STATE CAPITOL. OKLAHOMA CITY, OKLAHOMA 73105

May 28, 1982

The Honorable Don Koppel
State Representative
State Capitol Building
Oklahoma City, Oklahoma 73105

Opinion No. 82-45

To Representative Koppel:

The Attorney General has received your request for an official opinion, wherein you ask, in effect:

> Does 74 O.S. 1981, § 452.7, creating the Joint Committee on Federal Funds and authorizing the Committee, inter alia, to approve, disapprove, or require the modification of applications by Executive or Judicial branch agencies for federal financial assistance, violate Okl. Const. Art. 4, § 1, which forbids one branch of government from attempting to exercise the powers properly belonging to another branch of government?

Title 74 O.S. 1981, § 452.7 creates the Joint Committee on Federal Funds, which consists of ten (10) members of the Oklahoma Legislature, five from each House. The President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the respective chairpersons of the Senate Appropriations Committee and the House Appropriations and Budget Committee are designated by the statute as four of the members. Subsection A provides that the Committee "shall function as a joint committee of the Oklahoma Legislature when the Legislature is in session and when the Legislature is not in session." The powers of the Committee are set out in Subsections B and C, as follows:

> "B. . . .
>
> "1. To review and make recommendations regarding state plans and applications for federal financial assistance; and

> "2. To recommend to the Oklahoma Legislature procedures to coordinate, report and track the effects of federal financial assistance and federal policy on Oklahoma state government.
>
> ". . . .
>
> "C. The committee shall have the authority to approve, disapprove or recommend amendment of an application for federal financial assistance or comprehensive plan by any state agency, board or commission, including constitutionally created agencies, boards or commissions. Action to amend or disapprove shall be provided to the Federal Assistance Management Officer and the state agency, board, or commission applying for federal financial assistance by an official written communication from the committee. No agency, board or commission shall proceed to apply for federal financial assistance or expend federal block grant funds after action to amend or disapprove as provided in this section. If an agency, board or commission is requested to amend an application for federal financial assistance, a copy of the amended application for federal financial assistance shall be filed with the Legislative Fiscal Office no later than fourteen (14) calendar days after receipt of the request for amendment of the application. For good cause shown, the committee may grant a reasonable extension of that period, which extension period shall not exceed sixty (60) calendar days. The state agency, board or commission may not submit the application for federal financial assistance to the federal authority until the committee is satisfied that the required modifications recommended by the committee have been met. The application for federal financial assistance may be submitted only after the committee provides the state agency, board or commission and the Federal Assistance Management Officer an official written communication signed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate approving the amended application for federal financial assistance." (Emphasis added)

Subsection G provides:

> "The Director of State Finance shall not process any warrants or claims on any federal financial assistance received by a state agency, board or commission unless or until the Director of State Finance has received a written authorization from the Speaker of the House of Representatives and the President Pro Tempore of the Senate approving the federal financial assistance, or unless the application for federal financial assistance was submitted before October 1, 1981. The Director of State Finance shall immediately notify the Legislative Fiscal Office and the Federal Assistance Management Division when federal financial assistance is received by a state agency, board or commission in violation of any provision of this act."

These statutes were enacted by Laws 1981, Ch. 274 and were contained in Section 1 of that act. Section 2 amended 74 O.S. Supp. 1980, § 1521, pertaining to the Department of Economic and Community Affairs (DECA), and provided a new definition of "federal financial assistance":

> "3. 'Federal financial assistance' means a block grant program, loan, grant, subsidy, augmentation, advance, reimbursement or any other form of assistance made by the United States Government which exceeds Ten Thousand Dollars ($10,000.00); . . ."

Section 3, Laws 1981, Ch. 274 amended 74 O.S. Supp. 1980, § 1533, and along with a new Section 4 (codified as 74 O.S. 1981, § 1533.1), made various provisions for a Federal Assistance Management Division to function within DECA. The Federal Assistance Management Division is assigned by these statutes with various duties which are designed to implement and coordinate the activities of the Joint Committee on Federal Funds with state agencies applying for federal financial assistance.

It is the obvious purpose of this legislation to establish an entity, the Joint Committee on Federal Funds, composed entirely of members of the Legislative branch of government, to exercise approval, disapproval and effective modification authority over applications for federal financial assistance by boards, commissions, departments, agencies and officers in the Executive and Judicial branches of state government.

Many Executive branch agencies have been authorized by statute to apply for and accept federal financial assistance. See, e.g., 56 O.S. 1981, § 177 (Public Welfare Commission); 69 O.S. 1981, §§ 304(d), 401, 4009 (State Transportation Commission); 40 O.S. 1981, §§ 4-413, 4-604 (Employment Security Commission); 63 O.S. 1981, § 683.2 (civil defense, all state agencies); 69 O.S. 1981, § 1705 (Turnpike Authority); 82 O.S. 1981, § 926.3 (Water Resources Board); 2 O.S. 1981, § 2-4(k) (State Board of Agriculture); et al. Appropriation legislation has recognized that the courts also apply for and receive federal financial assistance. See, e.g., 74 O.S. 1981, § 285(16) note. It is the performance of these functions by Executive and Judicial branch agencies that is subject to management and control by the Joint Committee on Federal Funds, provided the legislation so empowering the Committee is constitutional.

Okl. Const. Art. 4, § 1, provides as follows:

> "The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others." (Emphasis added)

In re Opinion of the Judges, 25 Okl. 76, 105 P. 325 (1909), holds:

> "The powers of the state government are, under the Constitution, divided into three distinct departments--legislative, executive, and judicial--and the duties of each department are distinctly defined. These departments are independent of each other and sovereign within their respective spheres. Neither can exercise the powers properly belonging to the other, and 'it is the duty of each to abstain from and oppose encroachments on another.'"

Yet, Syllabus 2 of Bailey v. State Board of Public Affairs, 194 Okl. 495, 153 P.2d 235 (1944), also recognizes:

> "The theory of separation of the three powers of government (legislative, executive and judicial) does not mean that the distinctions between the three can be carried out with precision, but there may be a certain degree of blending of the three powers. The true

> meaning is that the whole power of one department may not be exercised by the same hands which possess the whole power of either of the other departments."

Springer v. Phillipine Islands, 277 U.S. 189 (1927), observes that the distinctions between the three branches of government cannot be identified:

> ". . . with mathematical precision and divide[d] into watertight compartments. . . ."

Separation of powers questions often turn on an identification of the particular power involved as Executive, Legislative or Judicial. See, e.g., Opinion of the Justices, Del., 380 A.2d 109 (1977); State, ex rel. Schneider v. Bennet, Kan., 547 P.2d 786 (1976); Puckett v. Cook, Okl., 586 P.2d 721 (1978). The particular power involved here is the power to apply for, modify or deny an application for federal financial assistance. As we have seen, by statute the Legislature has conferred such power upon Executive branch agencies in the past; and the Legislature now seeks, through the Joint Committee on Federal Funds, to acquire absolute control over the exercise of those powers. Shapp v. Sloan, Pa. Commw. Ct., 376 A.2d 791 (1976), holds that the legislative power to appropriate may be extended to federal funds. In re Opinion of the Justices to the Governor, Mass., 341 N.E.2d 254 (1976), denies the extension of legislative appropriative power to grant in-aid programs in which the State acts as a custodian, but funds received by the State as "federal reimbursements" were found to be "subject to the legislative power of appropriation." These cases may stand for the proposition that some, if not all, categories of federal financial assistance can be subjected to the legislative power of appropriation; but the legislation establishing the Joint Committee on Federal Funds does not purport to be an exercise of legislative appropriative power. While some of the functions of the Committee might be accomplished by the Legislature pursuant to its power of appropriation, that is not what the Legislature has done in this legislation. It has created a subordinate committee from its own membership with no check and balance, and has given it substantive and plenary power over Executive and Judicial branch agencies in their administration of programs receiving federal financial assistance. It is not necessary to decide here whether such power could be exercised by the Legislature as a whole because, in any event, the power could not be delegated to the Joint Committee on Federal Funds.

Plainly, the power involved here is either essentially legislative or executive in nature. It is well established that legislative bodies may not confer upon individual Legislators executive or administrative powers. Greer v. State of Georgia, Ga., 212 S.E.2d 836 (1975); State v. Bailey, W.Va., 150 S.E.2d 449 (1966); State, ex rel. Schneider v. Bennet, supra. Greer, supra, stated at 212 S.E.2d 838:

> "The question here is whether the legislature can constitutionally create a special instrumentality of government to implement specific legislation and then retain some control over the process of implementation by appointing legislators to the governing body of the instrumentality. Appellant's argument is that there is no constitutional defect in this arrangement. Carried to its logical extreme, this arrangement would permit the General Assembly to appoint an ad hoc committee from its own members to implement specific legislation. * * *" (Emphasis added)

Indeed, the legislation creating the Joint Committee on Federal Funds does precisely that. It is an appointment by the Legislature from its own membership of an ad hoc committee to implement specific legislation.

If it is assumed on the other hand that the power involved is legislative in nature, it cannot be delegated for plenary exercise to a committee of the Legislature. State of Montana v. Legislative Finance Committee, Mont., 543 P.2d 1317 (1975), struck down a statute empowering a joint committee consisting of members from both Houses of the Montana Legislature (known as the Legislative Finance Committee), to review and approve "budget amendments." "Budget amendments" were defined by the Court as "expenditures by state agencies in excess of their appropriations." The Court reasoned:

> "There can be no doubt that the legislature, sitting in session, could determine whether or not to release money already appropriated from a source other than the general fund and not available for consideration by an earlier session of that same legislature. Such a determination is an integral part of the final appropriation decision. The power to appropriate is a long established, well-recognized power of the legislature. State ex rel. Haynes v. District Court, 106 Mont. 470, 476, 78 P.2d 937 and cases cited therein. Further, these nongeneral fund monies are public operating funds of state government subject to the appropriation process. See companion opinion Board of Regents v. Judge, supra.

> "Alternatively the legislature might, as it has often done in other areas, make a policy determination and delegate to an executive agency or officer the duty to later implement the legislature's policy determination.
>
> "The legislature has the power to establish interim committees to gather information upon which the legislature can evaluate past actions or use as a basis for future decisions. Article V, Section 10, 1972 Montana Constitution; State ex rel. James v. Aronson, 132 Mont. 120, 314 P.2d 849; Transcript of Proceedings, Montana Constitutional Convention, (1972), pp. 1950, 1951.
>
> "But, the 1975 Montana Legislature in its enactment of S.B. 401 and H.B. 1 (Special session) empowering the Finance Committee to approve budget amendments delegated a power proper exercisable only by either the entire legislature or an executive officer or agency, to one of its interim committees. Such a hybrid delegation does not pass constitutional muster. The power in question here resides in either the entire legislative body while in session or, if properly delegated, in an executive agency. Clearly the action of the Finance Committee does not constitute the action of the entire legislature. Article V, Section 11, 1972 Montana Constitution. Just as clear is the fact that Article V, Section 9, 1972 Montana Constitution, would disqualify these legislators from membership on the Finance Committee if it were an executive agency. Therefore those sections of S.B. 401 and H.B. 1 (Special Session) empowering the Finance Committee to approve budget amendments are declared invalid as unconstitutional delegations of legislative power." (Emphasis added)

See also Gunter v. Blanton, S.C., 192 S.E.2d 473 (1972) and Aiken County Board of Education v. Knotts, S.C., 262 S.E.2d 14 (1980), the latter case holding in pertinent part:

> "As a general rule, the Legislature may not consistently with the constitutional requirement here involved, undertake to both pass

> laws and execute them by setting its own members to the task of discharging such functions by virtue of their office as legislators."

It is, therefore, apparent that whether the power to apply for, modify an application, or to reject an application for federal financial assistance be viewed as essentially legislative, executive or having attributes of both, it cannot be exercised by a committee of the Legislature.

It is, therefore, the official opinion of the Attorney General that 74 O.S. 1981, § 452.7, creating the Joint Committee on Federal Funds from the membership of both Houses of the Legislature, and assigning to said Committee the power to approve, deny or require modification of application for federal financial assistance by Executive or Judicial branch agencies, boards, commissions, departments and officers, is an unconstitutional abridgment of separation of powers under Okl. Const. Art. 4, § 1.

Jan Eric Cartwright

JAN ERIC CARTWRIGHT
ATTORNEY GENERAL OF OKLAHOMA

FLOYD W. TAYLOR
FIRST ASSISTANT ATTORNEY GENERAL

JEC:FWT:lm

ATTACHMENT 4

STATE OF OKLAHOMA

1st Session of the 39th Legislature (1983)

HOUSE BILL NO. 1188 BY: TALLEY

AS INTRODUCED

AN ACT RELATING TO STATE GOVERNMENT; AMENDING 74 O.S. 1981, SECTION 1533; ESTABLISHING THE OFFICE OF FEDERAL ASSISTANCE MANAGEMENT; SPECIFYING DUTIES AND PROCEDURES; SETTING REQUIREMENTS AND PROCEDURES FOR APPLICATIONS FOR FEDERAL FINANCIAL ASSISTANCE AND OTHER FINANCIAL ASSISTANCE; PROVIDING NOTIFICATION PROCEDURES AND REQUIREMENTS; PROVIDING FOR REGIONAL CLEARINGHOUSES AND PROCEDURES RELATING THERETO; PROVIDING PROCEDURES RELATING TO COMMENTS AND CONCERNS ON APPLICATIONS; PROVIDING OPERATIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 1981, Section 1533, is amended to read as follows:

Section 1533. A. There is hereby created within the Department of Economic and Community Affairs, the Office of Federal Assistance Management ~~Division~~ which shall contain the State Clearinghouse. Every state agency, board ~~and~~, commission, university and college, and every municipality, county government, other political subdivision, incorporated Indian organization, substate planning district, community action agency, and other designated community-based organization shall notify the Office of Federal Assistance Management ~~Division~~ of their intent to ~~file-an-application-for~~ request federal financial assistance under any federal assistance program ~~or-their-intent-to-request-financial-assistance-from foundations,-trusts-or-other-similar-funding-sources,-along-with-a copy-of-the-proposed-application,~~ not less than sixty (60) calendar days prior to submission of the final application to the funding source. In situations ~~where~~ in which sixty (60) calendar days' advance notification is impossible, notification shall be provided as soon as the decision is made by the ~~agency,-board-and-commission~~ requesting entity to prepare an application for federal financial assistance. ~~Such-notices~~ State agencies, boards, commissions, universities and colleges, and every substate planning district and community action agency shall also file their intent to request financial assistance from foundations, trusts, or other similar funding sources. The notification shall be given in the case of all applications, proposals, contracts, supplements, agreements, modifications, or amendments thereto between every state agency, board ~~and~~, commission, university and college, and every substate planning district, community action agency, and other designated community-based organization and any federal agency or foundation, trust, or similar funding source. In the case of entities of local government, the notification shall be given on all applications for federal financial assistance or substantial supplements, modifications, or amendments thereto. There shall be a thirty-day review period on each Notification of Intent and the full application. Nothing in this section shall be construed to grant the Department the authority to disapprove such application.

B. The ~~notice-of-intention-shall-have~~ notification and review procedure as prescribed by the Office of Federal Assistance Management shall be followed by every state agency, board, commission, university and college, and every municipality, county government, other political subdivision, incorporated Indian organization, substate planning district, community action agency, and other community-based organization. The applicant shall attach to the Department of Economic and Community Affairs Notification of Intent form a one-page cover narrative ~~attached~~ that shall include:

1. ~~A~~ a description of the objective of the program and how the program shall meet the stated objective; and

~~2.--A-list-of-other-state-agencies,-boards-and-commissions-or other-political-subdivisions-whose-programs,-services-and responsibilities-will-be-affected;~~

~~3.--A~~ 2. a statement of the intentions of the applicant should ~~federal~~ financial assistance for the program be reduced or terminated; and

~~4.--A~~ 3. a A brief statement of requirements which acceptance of the ~~federal~~ financial assistance will obligate the State of Oklahoma or any agency, board, or commission thereof to meet.

C. The Office of Federal Assistance Management ~~Division~~ shall provide a copy of the ~~notice-of-intention~~ Notification of Intent and proposed application for financial assistance received from ~~the agencies,-boards-and-commissions~~ all entities pursuant to the provisions of subsection A of this section to the Legislative Fiscal Office and any interested state agencies and affected regional clearinghouses. Regional clearinghouses shall be designated and authorized by the Department of Economic and Community Affairs upon fulfilling requirements established or to be established by the Department. The Office of Federal Assistance Management shall have the responsibility to determine which Notifications of Intent should be provided to specific regional clearinghouses.

D. Upon receipt of a ~~notice-of-intention-as-required-by subsection-C-of-this-section~~ copy of the Notification of Intent, the Legislative Fiscal Office shall refer ~~such-notice~~ the document to the Joint Committee on Federal Funds.

E. ~~Every-agency,-board-or-commission-receiving-official-notice of-action-on-any-application-for-assistance-shall,-within-seven-(7) calendar-days-of-the-receipt-of-such-notice,-advise-the-Federal Assistance-Management-Division-and-the-Legislative-Fiscal-Office-of such-action~~ For the purposes of coordination of programs and avoidance of duplication, comments on applications for financial assistance may be made by any entity receiving and reviewing a Notification of Intent. Reviewer's comments must be submitted to the appropriate clearinghouse, state or regional, by the date established by said clearinghouse. It shall be the responsibility of the affected clearinghouse to compile comments received and identify conflicts, if any, regarding the proposal with adopted state plans, or with regional and local community development policies, plans, or programs. Review comments received by the regional clearinghouse must be forwarded to the Office of Federal Assistance Management within thirty (30) days after receipt of the Notification of Intent by the regional clearinghouse. The Office of Federal Assistance Management shall make review comments available to the Legislative Fiscal Office upon request. The State Clearinghouse and the affected regional clearinghouse may have an additional thirty (30) days after receipt of the full application to complete the review process.

F. Clearinghouses, state and regional, shall make available copies of Notifications of Intent for assistance received and provide this information to all interested parties within their geographical review area within ten (10) days after the receipt of the Notification of Intent. Interested parties shall include but are not limited to state agencies, local and county elected officials, substate planning districts, community action agencies, and other interested organizations. Copies of full applications for financial or technical assistance shall be made available by the clearinghouse upon request.

G. When proposed applications are in conflict with adopted state plans or regional or local community development policies, plans, or programs, or when the proposed applications receive negative comments, the State Clearinghouse or affected regional clearinghouse shall convene a conference with the applicant, parties submitting negative comments, and other interested parties for the purpose of resolving the conflict or negative comments. Upon resolution of the conflict or negative comments, the conference results will be forwarded to the Office of Federal Assistance Management and to the Legislative Fiscal Office. If a satisfactory resolution cannot be reached, or any party feels that they have not been given adequate consideration, an appeal may be filed with the Joint Committee on Federal Funds. This request should be submitted in writing within five (5) days after the conclusion of the negotiations and should briefly describe the issues to be considered. The Joint Committee will hear testimony regarding the application and shall make a recommendation on the proposed project to the Governor who shall make the final determination and inform the Office of Federal Assistance Management.

H. Upon conclusion of the review process at the state and local level, the Office of Federal Assistance Management, acting as the single point of contact for this state, shall issue the comment letter and assign the State Application Identifier (SAI) number to the application. The Legislative Fiscal Office, the applicant, and the affected regional clearinghouse shall be notified of the SAI number by the Office of Federal Assistance Management, and shall also receive a copy of the comment letter from the Office. The SAI number shall be recorded on the first page of the application and on all correspondence relating to the application. Upon receipt of the SAI number, an application may be submitted to the funding source. The funding source shall not consider any application for financial assistance unless the SAI number is shown on the application.

I. Every state agency, board, commission, university and college, and every municipality, county government, other political subdivision, incorporated Indian organization, substate planning district, community action agency, and other designated community-based organization receiving official notice or action on any application for assistance shall advise the Office of Federal Assistance Management of such action within seven (7) calendar days of the receipt of such notice.

~~F.~~ J. Every state agency, board, or commission, and any other political subdivision, including their trusts, requesting or receiving federal financial assistance pursuant to an application for participation in a federal grant or loan program shall make all books and records relevant to such participation available for examination by the Office of Federal Assistance Management ~~Division~~ or the Legislature upon request.

~~G.--These-notification-procedures-as-prescribed-by-the-Federal-Assistance-Management-Division-shall-be-followed-by-every-state-agency,-board-and-commission-in-submitting-the-required-information-to-the-Federal-Assistance-Management-Division-and-the-Legislative-Fiscal-Office.~~

K. Due to the importance and impact of direct public and private development, all direct development projects and programs which exceed the cost of Fifty Thousand Dollars ($50,000.00) utilizing public assistance conducted by the United States Government, the State of Oklahoma, and other private or public entities shall be subject to the provisions of this section.

L. Federal agencies shall be obligated to notify the Office of Federal Assistence Management of their decisions within thirty (30) days after federal financial assistance has been awarded or rejected. If negative comments or concerns have been submitted by this state, these must be specifically addressed by the federal agency in the event that it should choose to favorably act on the proposed project. The Office of Federal Assistance Management shall forward correspondence concerning negative comments or concerns to the affected regional clearinghouse and to the Legislative Fiscal Office.

SECTION 2. This act shall become operative April 30, 1983.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

39-1-5618 DB:ms 02/09/83

ATTACHMENT 5

EXECUTIVE ORDER 12372 SURVEY SUMMARY

The following paragraphs reflect the summary results of the informal survey conducted by the Department of Economic and Community Affairs, State Clearinghouse on February 22nd and 23rd of 1983. The initial phone call was placed to the Designated State Contact for Implementation of Executive Order 12372 as published by the Office of Management and Budget. In many cases the original contact was no longer employed in that capacity and we were referred to the new contact or a staff person working with the implementation procedures.

Question #1: **What System Will Replace A-95?**

ANSWER: Thirty (30) of the respondents reported that the state will utilize the existing A-95 mechanism to gather, distribute and review programs and projects. Fourteen (14) states were undecided on the method and Six (6) failed to respond when they did not return our call.

Question #2: **How Will the New System be Formulated?**

ANSWER: Twenty nine (29) states responded that an Executive Order issued by the governor will be used to implement the new state procedures. Seven (7) states will implement the new procedures via legislation. Five (5) will utilize both legislation and an Executive Order with one (1) state now using a Memorandum of Agreement. Two (2) were unsure and the remaining six (6) we did not hear results.

Question #3: **How Will the State Fund the New System?**
ANSWER: Appropriated state funds for thirty one (31) states will be utilized at the state level only. Seven (7) states will appropriate funds for use at the state level and the local level. Five (5) are unsure and one (1) will not fund the process at any level. Six (6) states failed to call back.

Question #4: **Will You Utilize the Existing Substates?**
ANSWER: Existing substates will be utilized with the new state system in thirty six (36) of our states surveyed. Four (4) states were uncertain and four (4) states had no substates to use. The remaining six (6) states failed to call back.

WHAT SYSTEM WILL REPLACE A-95

RETAIN A-95 CONCEPT

- Alaska
- Arizona
- Arkansas
- Connecticut
- Delaware
- Florida
- Hawaii
- Idaho
- Minnesota
- Mississippi
- Missouri
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Oklahoma
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Texas
- Vermont
- Virginia
- Washington
- West Virginia
- Wyoming

UNDECIDED

- Alabama
- California
- Colorado
- Georgia
- Illinois
- Indiana
- Kansas
- Louisiana
- Maine
- Montana
- Ohio
- Oregon
- Rhode Island
- Wisconsin

NO RESPONSE

- Iowa
- Kentucky
- Maryland
- Massachusetts
- Michigan
- Utah

How Will the New System be Formulated

LEGISLATION	EXECUTIVE ORDER	UNSURE	NO RESPONSE
	Alabama	Colorado	Iowa
Alaska	Alaska	North Carolina	Kentucky
	Arizona		Maryland
Arkansas	Arkansas		Massachusetts
	California		Michigan
	Connecticutt		Utah
Delaware	Delaware		
	Florida		
	Georgia		
	Idaho		
Illinois	Illinois		
	Indiana		
	Kansas		
	Louisiana		
Maine	Missouri		
Minnesota	Montana		
	Mississippi		
Nebraska	Nevada		
	New Hampshire		
	New Jersey		
New Mexico	New Mexico		
	New York		
	North Dakota		
	Ohio		
Oklahoma	Oregon		
	Pennsylvania		
	Rhode Island		
	South Carolina		
South Dakota	Tennessee		
Texas	Vermont		
West Virginia	Virginia		
	Washington		
	Wisconsin		
	Wyoming		

MEMORANDUM OF AGREEMENT
Hawaii

How Will the State Fund the New System

STATE $ FOR STATE USE ONLY

Arizona
Alaska
Arkansas
California
Delaware
Florida
Idaho
Illinois
Indiana
Louisiana
Maine
Minnesota
Mississippi
Missouri
Nebraska
Nevada
New Hampshire
New Jersey
New York
North Carolina
North Dakota
Ohio
Oregon
South Carolina
South Dakota
Tennessee
Vermont
Washington
West Virginia
Wisconsin
Wyoming

STATE $ FOR STATE AND LOCAL USE

Connecticutt
Georgia
Hawaii
New Mexico
Oklahoma
Texas
Virginia

UNKNOWN

Alabama
Colorado
Kansas
Montana
Rhode Island

NO RESPONSE

Iowa
Kentucky
Maryland
Massachusett
Michigan
Utah

NO FUNDING FOR THE SYSTEM

Pennsylvania

WILL YOU UTILIZE EXISTING SUBSTATES

YES	UNKNOWN	NONE AVAILABLE	NO RESPONSE
Alabama	Colorado	Delaware	Iowa
Alaska	Illinois	New Jersey	Kentucky
Arizona	Kansas	Rhode Island	Maryland
Arkansas	Louisiana	Wyoming	Massachusetts
California			Michigan
Connecticutt			Utah
Florida			
Georgia			
Hawaii			
Idaho			
Indiana			
Maine			
Minnesota			
Mississippi			
Missouri			
Montana			
Nebraska			
Nevada			
New Hampshire			
New Mexico			
New York			
North Carolina			
North Dakota			
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
South Carolina			
South Dakota			
Tennessee			
Texas			
Vermont			
Virginia			
Washington			
West Virginia			
Wisconsin			

Prepared Statement of Constance Lieder, Secretary of State Planning for Maryland Before the Senate Subcommittee on Intergovernmental Relations, Committee on Governmental Affairs

Good morning, Mr. Chairman and members of the Subcommittee. I am pleased to be here today to discuss Maryland's progress in designing a new intergovernmental consultation process and review some problems we are encountering with Federal EO 12372 and agencies rules. I am Constance Lieder, Secretary of State Planning for Maryland.

State Action

Governor Harry Hughes designated the Department of State Planning on August 24, 1982 to develop a response to President Reagan's Executive Order 12372. This Department which currently operates the State Clearinghouse is the state contact for coordinating development of a new intergovernmental consultation process. After determining the interest of local governments and state and regional agencies in continuing an intergovernmental consultation process, Governor Hughes requested cooperation from all affected parties to maintain the existing review procedures until such time as a new process is designated. The Governor wishes to continue the process as similarly as possible to the existing procedures.

Since release of Executive Order 12372, we have made every effort to understand the implications of this action with regard to the review process and the policy issues which I will discuss. We have reviewed the Executive Order at meetings with local planning commissions and planning directors, the State Development Council and with interested state and local elected officials.

In October, the Maryland General Assembly, Commission on Intergovernmental Cooperation accepted testimony on the process. Also in October, an open information meeting with state and local officials was held to solicit early input and provide direction for efforts in formulating a new process. We have since established an Advisory Group to assist in developing a new process which is composed of local, regional and state representatives.

As the new review process is taking form, we will continue to seek broad input from all affected parties at open meetings. The Maryland Commission on Intergovernmental Cooperation may also hold a public hearing in the near future to discuss the new process.

Finally, I recently appointed a new director to head the State Clearinghouse Office to assist me in formulating a new process. This individual has substantial experience with local government and regional organizations.

We very much view this federal initiative as an opportunity to jointly enhance and revitalize the intergovernmental consultation process. State and local governments strongly support the concept of prior consultation and value the information shared as a part of the review procedure. Let me emphasize that information about federal actions and programs is essential to us.

We believe the Executive Order can give emphasis for state involvement and can do so without eroding the ability of local government and regional organizations to participate. We desire to ensure continued responsiveness to elected officials as is reflected in the current Maryland process. We value and want to enhance the intergovernmental policy and program coordination and resolution aspect of the process. We want to make the process more useful for planning and budgeting activities. And finally, the new process must be cost effective.

To achieve these objectives, we are working to formulate an executive order for Governor Hughes and supplementary procedures which would be published in the Maryland Register. Our goal is to have this process designated by the Governor by April 30, 1983, the deadline for suspension of the A-95 procedures.

Problems With Executive Order 12372

I would now like to discuss the problems we have encountered with working to designate a new review process.

Timing

Given that 1982 was an election year and that the federal agency rules were published in the Federal Register later than was originally anticipated by OMB (see attached letter from James F. Kelly), we are currently working under considerable time pressures in order to respond to the rules by March 10 and implement a new process that will be recognized by OMB by April 30. At this point in time, we are assuming OMB will recognize a new process based on the proposed executive order by Governor Hughes. The procedural rules would have to be published on an emergency basis to be effective by April 30. We had hoped to avoid that prospect, so as to ensure continued opportunity for state and local comment prior to putting a process in operation.

Consensus

We have reached agreement with local and regional representatives that the existing State Clearinghouse will continue its role in the review process as the "single point of contact". We are still negotiating the specific role to be played by the Baltimore Regional Planning Council and the Metropolitan

Washington Council of Governments, the other two currently designated clearinghouses. The National Capital Planning Commission also is seeking a regional role in respect to proposed federal actions in the National Capital area.

We support continued involvement of these area-wide planning agencies. In the past, their participation has been important and given that their membership is primarily that of local elected officials, we believe these agencies have a role in relation to actions which have a regional affect.

Also, in order to develop a consensus review comment to federal agencies, we are still exploring the method for handling disagreements. We are thinking of establishing a small, review body composed of elected officials from the state, regional and local levels for issues that have either multiple geographic or program affects or are areas of shared responsibility. This body could also participate in responding to complaints and appeals by Maryland jurisdictions and be used to solicit federal agency responsiveness to the comments developed by the review. The opportunity to delegate the consultation role by program or activity is also still under review and subject to discussion.

We are supportive of integrating special purpose organizations which are federally prescribed with the general government review network.

The method for interstate comments and reviews has not yet been developed. Discussions with adjoining states have not advanced sufficiently to establish a clear direction for this issue.

Program Coverage

I have personally reviewed many of the federal agency proposed rules implementing the President's Executive Order. I recognize that OMB has made significant efforts in striving for consistency among the various agencies. However, the multiple rules have been difficult to decipher, particularly with regard to program coverage.

Some federal agencies are summarily excluding programs previously covered under A-95 review procedures. The Executive Order implies that the state and local governments should be given greater latitude for consultation. But, we find some agencies have too narrowly defined the term "directly affected by" in order to exclude many programs. These programs such as housing mortgages which may ultimately benefit individuals, have been documented to have substantial affect on state and local government public service requirements.

The criteria used by federal agencies for identifying program exclusions is quite broad in its affect. We would disagree with several exclusion categories such as "direct finanical assistance to non-governmental entitites" and "research, development and demonstration projects". Finally, the agencies have not defined the very important area of "direct federal development", of which we have a very keen interest.

We are presently preparing comments on the proposed rules, but wonder what recourse we will have if we do not agree with the final program coverage. Additionally, we do not feel comfortable with the opportunity for federal agencies to exclude programs in the future. We anticipate a continuing struggle with some federal agencies, although the President and Congress have indicated the value of state and local consultation.

Federal Agency Compliance

Overlaying the attention to the details of the state designated process, is the absence of assurance that all federal agencies will cooperatively participate. We do not see how compliance will be monitored or administratively ensured, except at the initiation of the state.

We also wonder how the twenty-one federal agencies will consistently deal with all states, Indian tribes and territories when they may each have a different review process and program coverage.

In cases of federal agency non-accommodation of state and local government comments, who will make the judgement that appropriate agency action has been taken? The only apparent appeal is by the Governor to the federal agency administrator. The notification process itself appears cumbersome and of only marginal value.

It may be advisable to provide some form of ongoing oversight for non-accommodation actions. Achieving federal agency consideration of state and local comments has been previously identified as the major problem with the A-95 process. The President's Executive Order would appear to not have resolved this major source of frustration.

Recommendations

In summary, we are encouraged by the OMB initiative on behalf of the President to strengthen the intergovernmental consultation process. We appreciate the discretion and flexibility afforded by Executive Order 12372. We are distressed, however, by the limitations federal agency rules will place on state and local governments.

We believe we are making every best effort to consult with local and state officials regarding designation of a new process. We hope to strengthen the existing process in Maryland to ensure policy, planning and budget coordination and to enhance the quality, timeliness and usefulness of information shared as a product of the process.

On the other hand, we foresee problems yet resolved by the process. These problems from our perspective may be crippling to the current efforts and should be addressed:

1. We recommend that the deadline for termination of A-95 procedures be extended to provide sufficient time for the necessary consultation in light of the late publication of federal agency rules.
2. We recommend that OMB direct the federal agencies to re-examine the issue of program coverage. Unless specifically prohibited by Federal law, the opportunity for program review should be left to the interests of the state and local governments.
3. We recommend that OMB ensure that upon accepting the state designated system that all federal laws have been complied with. We desire the state to be held harmless from any subsequent court action alleging the state process is not in conformance with federal law.
4. We strongly recommend that the issues of federal agency compliance be addressed by the President or Congress. We want to be assured that the state review process will be used by all federal agencies and the comments it generates are fully considered prior to federal decision-making. Compliance should not become a burden of state and local governments. Federal oversight should be provided.

   If non-accommodation of state or local government policies becomes necessary, we desire an opportunity to appeal the agency decision to a federal body composed of elected officials. We would not expect that this would occur often, but if it does, it will probably be over a fundamental policy issue.

Thank you for your attention and consideration of my remarks. We appreciate the opportunity to present testimony. This process is important to us and we want be involved.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 23, 1982

Ms. Constance Lieder
Secretary, Department of State
  Planning
301 W. Preston Street
Baltimore, Maryland 21201

Dear Ms. Lieder:

Thank you for your recent letter requesting information on the inventory of programs affected by E.O. 12372 and of the policy issues which are to form the central basis for agency regulations implementing Executive Order 12372.

I fully understand why this information would be helpful to you in the efforts you are now undertaking to work closely with the officials of other state agencies and local officials in implementing the Order, and I hope to be able to supply much of the information you request very soon--possibly by mid-December. However, at this time, the policies developed by the Regulatory Task Force, and program inventories are still under review by the agencies. Thus it is not possible to send you the information you requested at this time.

Please be assured that I share your interest in seeing that states receive as much information--as soon as possible--concerning implementation of the Order.

Sincerely,

Jim Kelly

James F. Kelly
Deputy Associate Director
  for Intergovernmental Affairs

PREPARED STATEMENT OF GEORGE COPPENRATH

Mr. Chairman, and members of the Subcommittee on Intergovernmental Relations

I want to thank you for inviting me to testify before this subcommittee. My name is George Coppenrath and I am a Senior Planner with the Agency of Human Services in the State of Vermont. We have been participating in the Planning Requirements Reform Project since 1979 under rules surprisingly similar to those contained in Executive Order 12372, signed by President Reagan on July 14, 1982 and the subsequent Notice of Proposed Rulemaking published by 29 Federal Agencies in the Federal Register on January 24, 1983.

I use the words "surprisingly similar" in a positive sense. It was a very pleasant surprise to read that states, where permitted by law, could simplify and consolidate federal plans and substitute their own planning and budgeting systems for those required by federal regulation.

Simplifying, consolidating, and substituting state plans and processes is exactly what Vermont has been doing for the past three years under the Planning Requirements Reform Project. Now that the project has concluded it is reassuring to know that we can continue our efforts that have yielded substantial benefits for the Agency of Human Services and the State of Vermont.

I have structured my testimony in the following way: First, I will provide some background information about the project and a brief history of Vermont's participation. Second, I will describe the results of our efforts in Vermont and of the project in general. And third, based on those results, I will recommend some specific actions be taken by this subcommittee and by the executive branch.

At the national level, all governors received a letter in November, 1978 from Secretary Califano announcing that the Department of Health, Education and Welfare was undertaking a demonstration project in the area of human resources planning. His letter stated that "The purpose of the project is to determine the extent to which a State's own planning and budgeting processes can be substituted for the planning requirements imposed on State agencies by HEW programs. Within the limits of existing Federal statutes, selected States will be permitted to: (1) consolidate plans currently required by HEW; (2) develop these consolidated plans by substituting their own planning and budgeting processes for those required by HEW; and (3) utilize the plans to qualify for HEW program funds for Fiscal Year 1981."

He went on to add that a maximum of five states would be selected to participate. The response was overwhelming! The Department received 24 applications and decided to expand the size of the project to 12 states: Arkansas, Connecticut, Illinois, Massachusetts, Missouri, North Carolina, New Jersey, New York, Utah, Vermont, Washington and West Virginia. Each state had the opportunity to select the federal programs to be included and the size and scope of the effort for that state.

In June 1979, the Vermont State Planning Office, located in the Governor's Office, and the Agency of Human Services contracted with the Department of Health and Human Services (DHHS), to begin the Planning Requirements Reform Project (PRRP).

The Agency of Human Services administers programs through eight departments of state government: Mental Health, Health, Corrections, Social Welfare, Social and Rehabilitation Services, Aging, Economic Opportunity, and Developmental Disabilities. Prior to 1978, each department followed its own independent program and budget planning process; agency coordination of these processes was reactive and the resulting plans were compliance oriented and had little value beyond meeting categorical needs.

As one of the purposes of the project was to link federally mandated plans to the state's existing planning and budgeting processes, six federally funded programs were formally selected for this linkage; Title XX, Vocational Rehabilitation, Developmental Disabilities, Child Welfare, Independent Living, and Vocational Rehabilitation for the Blind and Visually Handicapped. Three additional HHS funded programs were added the second year: Child Abuse and Neglect, Maternal and Child Health/Crippled Children's Services, and the SSI-Disabled Children's Program.

We found that the plans required by those federal human service categorical grant programs and most others were seldom consistent with the management needs of Vermont's Executive Branch or Legislature. Each program had its own plan and each plan focused on its own set of federal regulations and functional interest rather than supporting policy and program decision-making or accountability for outcomes.

We decided to start from scratch. We asked ourselves, "If we were to write the best human services plan for Vermont, what would it look like?." Building on the state's existing planning and budgeting process and recognizing that the resulting document addressed the needs of many audiences, we designed a comprehensive plan for the whole Agency of Human Services. The plan included the consolidation of selected federal program plans, the simplifying of format and planning periods, and the substitution of that document to meet the federal requirements for those federal programs.

Vermont's plan was a five part document that provided a holistic view of the State's human services programs. Those parts were (1) a description of Vermont's geography and demography, (2) a discussion of human service needs in Vermont, (3) a discussion of the Agency of Human Services and its programs with a separate sub-section on each department, (4) a plan assessment and analysis, and (5) a narrative summary. Appendices included a discussion of the states planning and budgeting cycle, federal assurances, a cross reference index of federal plan content, program specific documentation, and a glossary.

When submitted to the appropriate federal agencies, the consolidated plan document successfully met federal plan requirements for all the programs, while providing a base and process for planning and managing human services on the state's own terms.

As I mentioned earlier, other states in the project adopted different approaches. The common denominator was the selection of programs and strategies that met the unique needs of the state at that time. For example: New Jersey and Missouri focused on the behavioral health area (health, mental health, alcohol and drug abuse); North Carolina selected children's services; while West Virginia identified services to handicapped children (crippled children's services, developmental disabilities, etc); Utah decided to consolidate its social services program plans (Title XX, Child Welfare services, foster care, day care, etc.); Illinois chose public health, which consolidated the Health Planning documents and the Public Health categorical plans which were separated previously and added the Womens, Infants, and Childrens (WIC) plan the second year. (The WIC plan is under the auspices of the Department of Agriculture which was not formally involved at that time); Washington selected 11 federal program plans, sustituted its own planning processes and consolidated the plans into one document which reduced by 1300 the number of pages of plan documentation from the previous year.

The Planning Requirements Reform Project demonstrated that: first, states could meet federal planning requirements using their own planning processes and consolidated plan documents. This aspect of the project was difficult but not as onerous as was originally imagined. Federal plan requirements stem from statutory language, regulations published in the federal register, guidelines promulgated to assist both federal reviewers and state plan authors, and standard operating procedures. Most of the documents were based on guidelines and standard operating procedures, which were designed to create uniformity for the federal program review and clear instructions to the states. These consistently uniform plans within each federal program were very different from each other when viewed at the state level. As most of the very specific requirements were either guidelines or operating procedures we found in Vermont and other states that there were no substantive changes required in regulatory or statutory planning requirements to adopt new plan processes and documents. These new consolidated plan documents could then be submitted to federal agencies and approved.

A second result was in paperwork savings and a reduction in administrative burden. If one compared the number of pages submitted to federal agencies prior to the project, Missouri reduced its plan size by 800 pages, Washington by 1,300 pages, and Illinois by 2,000 pages. In a somewhat humorous vein, Vermont arrived in Washington to deliver some 50 copies of its consolidated plan for circulation to other states. What we provided to the Project Assistance Council was a package in a small manila envelope which contained 50 plans on microfiche! Not to let a good idea go to waste, the states of Washington and Illinois had their respective documents placed . microfiche and distributed to all libraries in the state that had microfiche readers. This increased the potential use of the document enormously at a very small cost to the state, about 35 cents per plan.

A third result was improved planning and budgeting in each state. There was a shift from diverse planning for federal compliance purposes to strategic planning as part of each state's internal planning process. This shift in labor and focus allowed state agencies, local providers, advocacy groups, state legislatures, and federal agencies to rise above confusion over different plans for different programs, different planning processes involving different groups occurring at different times of the year. A great deal of time and effort had been spent trying to explain to advocacy groups and the state legislature how all these programs work, sometimes not very successfully.

Attention is now focused on larger planning issues, such as: what is the total need in the state, how are all the federal/state resources being brought together to address those needs, and how one program complements and supports another across the agencies and departments of government.

In addition, the project has helped the Vermont Agency of Human Services develop an effective management approach by standardizing and consolidating the state's planning and budgeting cycles. This approach has held up through two budget cycles, several crisis budget reduction exercises, and initial responses to the Omnibus Budget Reconciliation Act of 1981. The flexibility of this approach enables the Agency to respond to shifting conditions without inventing a new budget whenever circumstances suddenly change.

The automation and standardization of the plan document permits locating reports such as action plan implementation reports, need and priority summaries, and federal compliance data quickly and efficiently. This feature makes it possible to examine programs to identify those offering related or identical services, to better organize service delivery, and to further define target populations. This approach led to creation of the Long Term Care Project, a cross departmental program. The Agency expects to analyze the need and resources for other cross-departmental programs as the planning process continues. The Plan has also established a foundation on which needs assessment and evaluation will be used to build plans that are responsive to new developments.

All of this was and can be accomplished without sacrificing accountability. The project and the proposed rules implementing Executive Order 12372 allow for flexibility in planning requirements but not in how the funds will be spent; or who is eligible to receive services. There are other federal regulations that clearly define the uses of the funds under the different programs and establish accountability and reporting requirements that are audited at the state and federal level. These proposed "planning" regulations do not affect those requirements.

When the new regulations implementing Section 2(d) of Executive Order 12372 take effect I predict, based on the experience of the project, a number of consequences will result and I recommend specific action be taken.

Some states will not be interested in changing what they are doing at this time. However, a large number of states will see the opportunities inherent in these regulations. For those states it will be difficult deciding with which of the 51 non-excluded programs to begin, with whom they should communicate, and whether the federal government can actually manage the process. All of these issues came up during the course of the Planning Requirements Reform Project. Based on that experience I recommend that the Federal Agencies will need to have a well coordinated response to questions from states. At a minimum there must be a person in each agency designated to work with states' questions. The Office of Management and Budget should work with all of the federal agency designees to provide a clearinghouse function. In many instances we found that by contacting a state working on a similar problem we were able to assist each other tremendously with little increased demand on the respective federal agency. State to state assistance was extremely important to the success of the project. For example, New Hampshire, a non project state, after hearing of the project contacted the Council of State Planning Agencies (which provided clearinghouse and coordination functions for the project). Assistance was immediately provided by Vermont, other states, and CSPA in implementing their planning and management project. In their own estimate, the assistance provided saved them over a year's worth of time and effort.

A network developed among the states, project and non-project, including CSPA. Through periodic Project Assistance Council (PAC) meetings states provided and received assistance from each other and received support from the federal agency sponsoring the project, the Department of Health and Human Services. In my opinion a similar approach to the implementation of these regulations would not only save a lot of confusion, time, and effort but would greatly assist states to use their existing capability to engage in substantive rather than compliance planning.

I mentioned in my opening remarks that I was pleasantly "surprised" by the language contained in Section 2(d) of Executive Order 12372 and the resulting draft regulations. I was aware that a number of agencies, including the Office of Management and Budget, the General Accounting Office, and others were monitoring the project and participated in many PAC meetings. It appears that they have listened to the states, observed their competencies, and have responded constructively. I hope they go a step further and adopt these recommendations.

After all, a project that started under Secretary Califano in the Carter Administration, survived a change of Secretaries with Patricia Harris, and continued under Secretary Schweiker in the Reagan Administration proves that good ideas and common sense are non-partisan.

Senator **DURENBERGER**. The hearing is adjourned.

[Whereupon, at 11:45 a.m., the subcommittee adjourned subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

UNITED STATES SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., March 10, 1983.

Hon. DAVID A. STOCKMAN,
Director, Office of Management and Budget, Executive Office Building, Washington, D.C.

DEAR MR. STOCKMAN: On July 14, 1982, President Reagan signed Executive Order 12372 which instructed Federal agencies and departments to modify and streamline the intergovernmental consultation process which had been governed by Office of Management and Budget Circular A-95. During the months of January and February 1983, some 29 departments and agencies published regulations pursuant to the E.O. 12372. After the public comment period closes on March 10, 1983, the agencies and departments will publish final rules with an effective date of April 30.

We have reviewed the proposed regulations. Although we appreciate the sincere effort that has been made to streamline the process and to ensure that Federal agencies will heed the comments of state and local governments, we have serious concerns regarding some aspects of the proposed rules. We believe that the rules need modification to assure full compliance with important provisions of Federal law and successful implementation of this new intergovernmental consultation process. In particular, we ask that the rules be modified to address the following concerns:

1. Unlike OMB Circular A-95, the new regulations are not designed to implement Section 204 of the Demonstration Cities and Metropolitan Development Act which requires that metropolitan planning organizations be afforded 60 days during which to consider and comment on all Federal projects with a significant impact on the metropolitan region. Although it would be possible to establish an entirely separate Section 204 process, such a two-track consultation system would seem to us wasteful and confusing. The regulations should be modified to incorporate the requirements of Section 204 within a unified consultation mechanism.

2. We do not find that the proposed regulations fully implement the intent of Congress as expressed in the Intergovernmental Cooperation Act of 1968, specifically Sections (b) and (c) of Section 401. The Act places a burden on all Federal agencies to seek the views of all governments that would be affected by a project either assisted or developed directly by any part of the Federal establishment. The proposed guidelines will result in only one point of view from the single point of contact, thus the viewpoints of local governments and regional agencies could be superseded by the state under this arrangement. The right of a state, regional, areawide or local government to be notified and afforded the opportunity to comment, cannot be abridged by any action taken by some other entity (a state government in a state-designed process), even should advance consultation occur. At a minimum, program coverage should be established through a process that requires concurrence of all substate governments, and should recognize that any substate government can at any time seek broader coverage than is offered by the state-designed program.

3. The thirty-day time limit on consultation included in the regulations is entirely unrealistic. Adequate consultation includes several steps: 1) The point of contact is notified of a pending action; 2) the point of contact notifies all affected governments; 3) affected governments study the proposed action; 4) affected governments draft comments; 5) comments are forwarded to the point of contact; 6) the point of contact studies comments to determine if any conflict exists within the comments of separate governments; 7) if conflict exists, the point of contact seeks resolution; 8) the point of contact drafts final comments;

and 9) the point of contact submits comments to the Federal agency. The current A-95 procedures allow at least 60 days which is indefinitely expandable, if conflict between parties arises. At a minimum, the regulations must provide sixty days for the consultation process.

4. The regulations should not include a single point of contact at the state level. Evidence on the record indicates that states have shown little interest either in the existing A-95 process or in the potential for a new consultation program under the Executive Order. In the absence of real concern at the state level, expressed by elected officials of state government, we see no need to modify the process in a way that tilts the field toward state government. Recognizing that A-95 had its problems, we agree that reform is needed. Lack of interest, and therefore lack of sufficient resources devoted to comment and consultation, has been a problem both at Federal departments and agencies and at some clearinghouses. This problem with A-95 will not be corrected by involving another party that has only minor interest in servicing the consultation process.

We believe that these flaws in the proposed regulations, if uncorrected in the final rules, will spell the end of intergovernmental consultation. Such a result is clearly contrary to the intent of Congress and the laws of the United States. We recommend that modification to the rules be made to address these concerns and that the existing A-95 regulations continue in effect as guidelines to Federal agencies until such time as a workable consultation program has been designed.

Sincerely,

Dave Durenberger, Rudy Boschwitz, Thad Cochran, Charles McC. Mathias, Jr., Sam Nunn, Jeff Bingaman, Wendell H. Ford, William S. Cohen, Carl Levin, Jim Sasser, Walter D. Huddleston, Mark O. Hatfield, Pete Wilson, Donald W. Riegle, Jr., and Patrick J. Leahy, U.S. Senators; Ted Weiss and James L. Oberstar, U.S. House of Representatives.

ORANGE COUNTY NEW YORK

LOUIS HEIMBACH

COUNTY EXECUTIVE

January 21, 1983

Dear Dave:

I thank you for the opportunity to share my thoughts concerning needed revisions in the process of evaluating, reviewing and coordinating administration of federal grants, projects and programs. My thoughts bear on improving the intergovernmental coordination process, whether it be contained in revisions of OMB Circular A-95 or changed to implement Executive Order 12372.

First, we should be guaranteed that federal agencies will seek and be made to respect the views of state and local governments and regional organizations when making grants, proposing projects and developing programs. Uncoordinated action by federal agencies can and do cause too much investment in housing, hospitals, transportation, and other public works. The failure to plan carefully can also lead to federal financing of projects that work at cross purposes. In short, we must make every effort to ensure that scarce federal, as well as state and local, dollars are put to the most effective possible use.

Second, the clearinghouse established to facilitate intergovernmental coordination should be accessible to local government. Our experience has been that the further removed we are from the clearinghouse, the higher the administrative costs, the more frequent the time delays and the shorter the review periods.

Third, administrative procedures should be such as to require a full statement or presentation of the proposed action. Too often an intelligent evaluation cannot be made on a proposed action because of the lack of pertinent information. This necessitates telephone calls, the preparation of correspondence, etc. and which, in our experience, is not always answered.

Fourth, quite often the time needed to review and report on a proposed action exceeds the thirty (30) days currently allotted. I feel that a provision should be made to permit a reasonable extension of state and local review time where it would result in a more complete response.

Fifth, the new procedure should also contain a mechanism for notifying state and local governments of the status of a proposed action following state and local government review. We never know whether a proposed action is approved for funding or what, if any, changes were made in the initial application. I don't like surprises!

Sixth, the rewrite of implementing procedures should be short and to the point and be prepared for public comment well in advance of adoption.

I hope the above will serve as a useful resource for you during this period of discussion and transition, and I welcome the opportunity to consult further with you in drawing conclusions about needed revisions.

Sincerely,

Lou

Metropolitan Council
300 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

Telephone (612) 291-6452

Office of the Chairman

March 1, 1983

Senator David Durenberger
Room 353
Russell Senate Office Building
Washington, D.C. 20510

RE: March 3 Public Hearing
Proposed Implementation of Executive Order 12372
"Intergovernmental Review of Federal Programs."

Dear Senator Durenberger:

The Metropolitan Council has responded to the Office of Management and Budget's proposed implementation of Executive Order 12372.

We are sending to you for the hearing of the Subcommittee on Intergovernmental Relations on March 3, 1983, the same information we have sent to OMB.

Since July 14, 1982, when President Reagan published Executive Order No. 12372, the Metropolitan Council of the Twin Cities has tried to keep up on all information published on the implementation of this Order. It has also been an active participant in the State of Minnesota in the preparation of a state plan for consultation to go into effect on April 30, 1983. The information upon which we are relying for guidance and to which we are responding are the Questions and Answers on Executive Order 12372, dated January 28, 1983, the sample letter to the Governors published January 27, 1983, and the proposed agency rules, except those from HUD, published on January 24, 1983.

The Metropolitan Council is the regional administrative agency established by the Legislature to coordinate the planning and development of the Twin Cities Metropolitan Area. The agency was originally established by the Legislature in 1967. The Governor appoints all members of the Council from Districts after consulting all members of the Legislature representing any portion of a district.

The Legislature has given the Council review responsibility and authority over many actions of both public and private parties. The subjects of review are mainly plans, budgets, permits, and grant applications in a broad range of interests and activities. In some cases, the authority is advisory and in others very definitive. The authority to review grant application predates the issuance of OMB Circular A-95 and has been important among the tools needed to coordinate planning and development. The "Project Notification and Review System" in Circular A-95 was an especially important tool. The A-95 process was a well conceived process and one that the Metropolitan Council regrets seeing abolished.

The Metropolitan Council reviews all matters brought before it on the basis of previously adopted policy based Development Guides. This has been an orderly process where parties know the process and the review criteria ahead of time.

While there is plenty of leeway in the OMB and Agency implementation proposals for states in the development of their process, there are several somewhat related problems that will prevent the full implementation of the Executive Order and its expected benefits.

The first problems relate to the "single point of contact" requirement. The federal agencies can interpret communications through this contact in any manner they choose. However, any views submitted through such a contact cannot, in Minnesota, be an official view of the State without a delegation of this power from the Legislature. The Governor may be able to speak for his administration, but the Legislature speaks for the State. This becomes a particularly troublesome point if the Governor were to delegate review to regional agencies. The potential for political manipulation by the single contact is tremendous.

It is important also that the federal agencies establish single points of contact so that the State's views will always get to the proper point in the agency.

Another respect where the single "voice," concept will be a problem is when there are differences to be worked out. Our experience in working out problems under the A-95 process shows that this almost always cannot be done in 30 days. Seldom can the differing parties even be brought into the same room in 30 days.The meeting schedules of the differing agencies just don't mesh well enough to allow resolution in this time period. The negotiation of an extension itself would often take a lot of this time. The federal agencies must either allow a review period of longer than 30 days or establish an extension procedure that is quick, easy, and sure.

It is the opinion of this agency that one of the best features of the present A-95 process is the notification requirement for affected parties. This process is important as an information vehicle to these parties and, after their consideration, an information vehicle back to the reviewing agency whether there is concurrence or the identification of a difference. Thirty days does not allow this process to work, especially if differences must be resolved.

In the proposed rules of most of the agencies published on January 24th is a 10 day delay in implementing the agency's decision. If this is intended to be an appeal period it is completely unworkable and unrealistic. It is as good as no appeal procedure at all.

Related to the timing problem in many ways is the fact that many of the proposals reviewed under A-95 were not applications, but Letters of Intent to prepare an application or preapplications. In most cases these carried enough information upon which to make a review. This allowed the interested parties to work out differences while the proposal was still fluid and before positions became relatively fixed with passage of resolutions and budgets. If the states can include such a prereview in their procedure this problem could take care of itself. The OMB policies are silent on this matter.

In summary, we regret that the A-95 process is being abolished and replaced rather than being improved. The process established by Executive Order 12372 has potential if certain of your guidelines of OMB and rules of the agencies are changed.

We ask that:

1. The single point of contact as an official voice of the State concept be reanalyzed.
2. The time allowed for review and resolution of differences be lengthened to 60 days, or guidelines specify that states may require review of pre-applications or letters of intent and the agencies will help to inform applicants of these requirements.
3. The appeal must be made more realistic and meaningful by a lengthening of the time period.

I am sure that you have noticed that this letter seems to concede the main issues of whether A-95 needed to be replaced rather than repaired, whether an executive order is a better method than a rule, and whether Executive Order 12372 is legal in all respects. We hope that your hearings will sort out these issues with more expert testimony than ours.

This letter mentions only the main impediments to implementation of the Order that would seem to prevent its achieving its full potential.

In looking forward to the possibility of future work by your committee on grant and project review processes and even to the role and operations of regional agencies, we would welcome the invitation to participate in any way we can. Thank you very much for your kind consideration.

Sincerely,

Gerald J. Isaacs

Gerald J. Isaacs
Chairman

GJI:dh
cc: Minnesota Department of Energy, Planning & Development

STATE OF COLORADO

DEPARTMENT OF LOCAL AFFAIRS
OFFICE OF THE EXECUTIVE DIRECTOR

1313 Sherman Street, Rm. 518
Denver, Colorado 80203
Phone (303) 866-2771

Richard D. Lamm,
Governor

Morgan Smith
Executive Director

March 4, 1983

Mr. David A. Stockman, Director
Executive Office of the President
Office of Management and Budget
Washington, DC 20503

Dear Director Stockman:

Shortly after Executive Order 12372 was promulgated last July, Governor Lamm instructed me to form a task force of local and state officials to develop a new intergovernmental review process for Colorado. The task force first decided to review and comment on the proposed rules for implementing the Executive Order. This letter is the task force's response to those rules. Please consider it a supplement to the attached letter signed by Governor Ed Herschler of Wyoming on behalf of the member states of WESTPO.

The task force appreciates the opportunity provided by the Executive Order to establish a more meaningful process for local and state review of federal financial assistance and direct development actions. The task force also supports the President's willingness to strengthen our influence on federal decision-making, and we applaud the explicit language in the Order regarding accommodation of local and state views. As a whole, the Executive Order is a bold initiative to strengthen the concept of intergovernmental coordination.

Unfortunately, our enthusiasm for the Executive Order does not extend to the implementing rules from the twenty-six Federal agencies. It is the task force's conclusion that the intent of the Order has been severely diluted by the agencies' proposed rules, and instead of emphasizing stronger intergovernmental coordination, the rules stress administrative convenience for the federal government. Therefore, unless there are significant changes in the tone and substance of the rules, we feel that successful implementation of the Order will be difficult, it not impossible to achieve. The concerns described below elaborate on this concern.

Single Point of Contact

The State of Colorado requests that the single point of contact provision be dropped as a mandatory requirement, and that states be afforded the opportunity to retain a dual local-state review system using one or more control points of contact.

The proposed suggestion that a single official or office of state government be assigned to transmit comments on all projects covered by the Executive Order is unacceptable to Colorado. To argue that the single point of contact "has obvious benefits from the point of administrative simplicity" is to completely overlook the potential impact facing a designated state agency in terms of responding to added paperwork demands, and the burdens imposed by the need to reconcile conflicting views.

The argument that comments submitted by a single point of contact would alert Federal agencies that the communications be treated as "official" under provisions of the Order is weak. If, for example, Colorado designated municipalities and counties the responsibility to review and comment on all financial assistance programs subject to the Order, the local governments could preface their official remarks by making reference to the Order and of the state's delegation of review authority. Certainly, this could be as effective as transmission via a single point of contact, and it would serve to eliminate an unnecessary third party.

Administrative convenience aside, local governments in Colorado feel they should have direct access to Federal officials throughout the review process. The single point of contact is an artificial barrier that impedes accessibility, and heightens prospects for friction between local and state governments.

If states are to have maximum flexibility to design a new process, this flexibility must carry over to consideration of different alternatives for the transmission of official views. In Colorado, we intend to examine the possibility of delegating review and comment authority on most financial assistance programs to local government. If the task force adopts this approach, we will assign local governments (or regional organizations) the responsibility for all communications with the federal agency, including official transmission of views.

Accommodation

The task force is in general agreement with Governor Herschler's letter as it pertains to weaknesses in the proposed rules on accommodation. Rather than restate these deficiencies, it will suffice to point out that successful implementation of the Executive Order is contingent on changes to the proposed rules that will strengthen the accommodation requirement, ensure full explanations of federal nonaccommodation and provide states and local governments with an opportunity to appeal Federal nonaccommodation decisions. In addition, the task force suggests the accommodation language be revised to require Federal agencies to seek cooperative solutions with local and state governments before deciding not to accommodate their views.

Specifically:

- A Federal agency shall make every effort to accommodate state and local views, or negotiate cooperative solutions when differences exist. To encourage conflict resolution, Federal agencies will provide state and local decision makers with an opportunity to administratively appeal instances of nonaccommodation. The rules should be amended to include procedures for an appeal process, together with adequate time for its implementation. For example, if a local or state government receives notice of Federal nonaccommodation within the ten-day period, and if said state or local government notifies the Federal agency of its wish to appeal the decision, an additional forty-five days will be allowed to implement the appeal process.

- When accommodation of state and local views cannot be satisfied, the federal agency shall explain fully and in writing its reasons for nonaccommodation. The written notice shall be sent directly to the person who transmitted the comments on the federal action in question. Nonaccommodation decisions should be explained in terms of one or more of the following reasons:

  1. evidence of statutory or regulatory constraints (with the specific statutory or regulatory citation identified);
  2. evidence of duplication or conflict with other Federally supported activities;
  3. evidence of applicant unsuitability to carry out the project;
  4. evidence that the national interest outweighs state or local concerns about the activity.

The proposed rules are vague regarding Federal agency responsibility when confronted with conflicting views from state and local comments. The task force requests that Federal agencies give full and serious consideration to comments which have not been reconciled into a single state position prior to transmittal. The difficulty of reconciling divergent views increases with the importance of those views. When state and local governments cannot resolve conflict, Federal agencies should be especially aware of the weight given to the views of each.

Responsibilities of Federal agencies to the new process

For the Executive Order to be both effective and credible, Federal agencies must require applicant organizations to comply with the new state processes as a condition for project approval. The proposed rules lack this requirement and suggest that "States...work witn applicants to ensure that applications (be) provided...in a timely manner."

This language is unacceptable because it presumes that states will know in advance the applicant organizations that plan to apply for a particular program. Experience suggests that this is often not the case. Assuming that the new process covers a variety of programs, it is also impractical to expect a state or local government to be notifying scores of applicants about their Executive Order responsibilities.

The task force suggests that the procedures found under Part I, Section 6 of the A-95 Circular be included in the final implementing rules. Specifically, Federal agencies having programs covered under the Executive Order will:

- inform potential applicants of the state process and their responsibility to fully comply with that process;
- assure that all applications be submitted to the appropriate local/regional or state review agency prior to formal submission; and,
- assure that local/regional or state review agencies have the opportunity to fully review and comment on all applications. Formal submission of an applicant's proposal to the federal agency will not be accepted until the applicant can demonstrate that he has complied with the state process.

In addition, the task force requests the proposed rules be strengthened to insure timely delivery to local and state governments of information on proposed Federal programs or actions. As a minimum, information on program objectives, probable funding levels (including state allocations when applicable), criteria for grantee selection and estimated decision dates shall be sent to regional and state clearinghouses during the first stage of the program planning cycle.

Minimum review period

The task force fully supports Governor Herschler's request that local and state governments be allowed at least 45 days to comment on proposed federal financial assistance and direct development actions. Exceptions to the 45 day limit would only be permitted when mutually agreed upon by the federal department and the local/state agency. The rules should also specify that the review period will begin on the day the local or state clearinghouse receives the proposed action.

Consistency

The task force takes exception to the lack of consistency in the draft rules from the twenty-six Federal agencies, especially in regard to the listing of program inclusions and exclusions. The absence of complete information in this area has made an evaluation of proposed exclusions difficult to perform. We strongly recommend that OMB insure consistency among agencies regarding the listing of programs to be included or excluded.

Proposed Exclusions

The task force has carefully reviewed the list of programs and activities that were proposed for exclusion from the Executive Order. The following is a list of proposed exclusions that the task force requests be subject to Executive Order coverage. In preparing this list, we were guided by two criteria. They were:

1. that any program or activity relating to, or affecting a function of a general purpose local government or a state agency be included; and,
2. that the existence of a federally required consultation process not be used to automatically exempt a program or activity from inclusion under the Executive Order. The final decision as to whether such programs are included or excluded should be reserved to local and state governments to cooperatively make.

- Department of Agriculture
  - Rural Electrification Loans and Loan Guarantees
  - Recreation Loans (provided by the Farmers Home Administration)
  - Soil and Water Loans
  - National Forest System Activities
  - Forest Service land exchange proposals
  - Forest Service projects of small scale or size that are highly localized.
- Department of Commerce
  - CFDA #11.300 - Grants for Public Works and Development Facilities
  - CFDA #11.302 - Support for Planning Organizations
  - CFDA #11.303 - Technical Assistance
  - CFDA #11.307 - Special Economic Development and Adjustment Assistance Program
- Department of Defense
  - Section 404 of the Clean Water Act - Army Corps of Engineers "Dredge and Fill Permits".
- Department of Health and Human Services
  - CFDA #13.648 - Child Welfare Services Training Grant
  - CFDA #13.668 - Special Programs for the Aging/Title IV

- Department of Interior

  While the Department did not publish a list of excluded programs or activities, the preamble on page 3153, column three, reads, "The Department believes it is more beneficial to continue existing consultation processes with state and local governments rather than imposing additional or duplicative regulatory requirements under the Executive Order."

  The intent of the Executive Order was to give states (in cooperation with local general purpose governments) the opportunity to "develop their own processes or refine existing ones...." Therefore, we feel it inappropriate for the Department of Interior, or any other federal agency, to suggest that states cannot impose additional consultation requirements via the Executive Order. Again, that decision should be left to state and local governments to make.

- Environmental Protection Agency

  - Plans and permits (as listed on page 3213, column two).

- Postal Service

  - Expansion, alteration or improvement of a facility where the gross size is not increased by more than 40% and the site size is not increased substantially.

- Small Business Administration

  - State and local development company program, at least in those instances where the company intends to undertake an activity already provided by a local general purpose government.

- Federal Energy Regulatory Commission (FERC)

  While this agency was not subject to the Executive Order, the task force suggests that FERC licensing and certification of convenience and necessity be made available to states for possible inclusion into the new process.

Conclusion

The task force has other concerns with the proposed rules, especially with respect to certain definitions and the waiver option available to federal agencies. However, the comments made by Governor Herschler in his letter adequately cover these areas, and we can only emphasize their importance.

We ask the Federal agencies to make every effort to accommodate the suggestions offered here, and in Governor Herschler's letter. The task force feels that these recommendations are necessary to strengthen the Executive Order and improve intergovernmental cooperation among all levels of government. If these suggestions cannot be accepted, we join with Governor Herschler in requesting that the March 10 comment period deadline be extended to allow states and local governments to negotiate acceptable changes on outstanding issues.

Again, thank you for the opportunity to comment on these proposed rules. We will be happy to respond to any questions that your staff or other agencies may have about these comments.

Sincerely,

Morgan Smith

Morgan Smith
Executive Director

Attachment

cc: Governor Richard D. Lamm
Harry Bowes, Colorado Counties, Inc.
Ken Bueche, Colorado Municipal League
Dodie Gale, Special District Association of Colorado
Jonathan Rutstein, Colorado Association of Regional Councils
Directors, Council of Governments
Mike Quaranta, United States Senate, Committee on Governmental Affairs
Lyn Zimmerman, Department of Agriculture
H. Stephen Halloway, Department of Commerce
Office of the Chief of Engineers, Corps of Engineers, Department of the Army
Gordon Boe, Department of Health and Human Services
Division of Acquisition and Grants, Department of the Interior
Central Docket Section, Environmental Protection Agency
Director, Office of Program Planning, Real Estate and Buildings Department, U. S. Postal Service
Martin Teckler, Small Business Administration

METRO

METROPOLITAN SERVICE DISTRICT
Providing Zoo, Transportation, Solid Waste and
other Regional Services

Rick Gustafson
Executive Officer

Metro Council

Cindy Banzer
Presiding Officer
District 9

Bob Oleson
Deputy Presiding Officer
District 1

Richard Waker
District 2

Charlie Williamson
District 3

Corky Kirkpatrick
District 4

Jack Deines
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Ernie Bonner
District 8

Bruce Etlinger
District 10

Marge Kafoury
District 11

Gary Hansen
District 12

527 SW Hall St
Portland, OR
97201
503/221-1646

March 4, 1983

The Honorable Dave Durenberger
Chairman, Subcommittee on Intergovernmental Relations
U. S. Senate
U. S. Capitol
Washington, D. C. 20510

Dear Senator Durenberger:

Re: Implementation of Executive Order 12372

The Metropolitan Service District (Metro) serves as the Areawide A-95 Review Clearinghouse for the Portland, Oregon, tri-county area. Metro has been working with the Governor's office, other Areawide Clearinghouses and local jurisdictions since October 1982 to establish a new process for Intergovernmental Review of Federal Programs. We have also been working with OMB since January on the new review process. In addition, a meeting which included OMB staff was held for the states of Idaho, Oregon and Washington on February 16 to discuss the new review process. Following are comments on the proposed procedures and regulations for Intergovernmental Review of Federal Programs.

1. We believe the single point of contact will not be as effective in registering local comments as the current multi-points of contact. Local issues and concerns may be subordinated to state concerns or may be inadequately dealt with due to the short time period for review and consultation with local officials. We urge OMB and the federal agencies to support the current system of multi-points of contact (i.e., state and areawide clearinghouses).

2. The time frame for review of projects is too short. Thirty days is an unrealistic limit, especially with the single point of contact. The Governor's office most likely would serve as the single point of contact in Oregon--that office would in turn notify Areawide Clearinghouses which in turn would notify local jurisdictions of projects to be reviewed. We strongly recommend a 45-day review period with a 15-day automatic extension if required by the single point of contact.

3. If the single point of contact is selected, we strongly recommend that locally elected officials and staff be informed and allowed to participate in all project reviews, recommendations and decisions. This must be required of the single point of contact. The State view is not the final view. In Oregon we will work with the Governor's office to ensure such participation. We urge OMB and federal agencies to make this mandatory of all states setting up new processes for intergovernmental review of federal programs. Intergovernmental review must include the full participation of Regional Councils and local jurisdictions.

4. Consensus will be difficult to achieve in the new process. How is consensus defined? Who determines when consensus has been reached? Will Regional Councils and local jurisdictions actively participate in this process? Will valid comments be overlooked in order to achieve consensus? Within a 30-day time frame consensus cannot be achieved. A 45- to 60-day time frame is more realistic.

We urge OMB and federal agencies to accept, respond and accommodate comments on project reviews from Regional Councils and local jurisdictions.

5. Enforcement of the new review process is crucial. Federal agencies must accept, review and accommodate project review comments. We suggest that OMB's role be strengthened as an overseer of federal agency compliance with the new review process. OMB should document all records of "non-accommodation" by federal agencies, be pro-active in getting the agencies to adhere to the new review process, and issue cross-cutting regulations on complying with the new process and the consequences if they are not followed. Congressional committees (e.g., Intergovernmental Affairs) should also monitor the new process closely and hold hearings on "non-accommodation" problems, if needed. If enforcement of the new review process is limited to an annual report from OMB to the President the new process will fail.

6. Interstate project review is crucial, especially in interstate metropolitan areas. If one state establishes a project review system, and another does not in an interstate area, there is a problem. OMB and federal agencies must work with and encourage the state with no review process to adopt one, or at least a process to deal with interstate issues and projects. Hopefully, this situation can be resolved at the state level.

7. We know nothing about how the new review process affects HUD programs. Housing and community development programs are significant projects which should be submitted for state and local review. Unfortunately, Congress has exempted major HUD programs from intergovernmental review. We would like to see the programs covered by the new review system.

8. We are confused as to which programs are to be excluded from review. We believe that any program suggested by state and local governments be included in project reviews. The list of programs to be reviewed as determined by the states, Regional Councils and local jurisdictions should supersede the recommendations of the federal agencies except in rare instances (e.g., national security).

9. Finally, we protest the lack of opportunity to comment on Executive Order 12372. The Executive Order may be in violation of Title IV of the Intergovernmental Cooperation Act of 1968. Such a unilateral decision by the President is contrary to his efforts to involve state and local officials in the domestic and intergovernmental affairs decision-making process.

Thank you for your consideration. We hope our comments will be incorporated in the final regulations implementing Executive Order 12372. We expect responses in writing to all of our concerns prior to the implementation of a new review process. We look forward to working with OMB and federal agencies in making a new review process work. If you have questions regarding our comments on Intergovernmental Project Review of Federal Programs (formerly A-95 Review), please contact Mel Huie, Metro A-95 Review Coordinator, at (503) 221-1646.

Sincerely,

Rick Gustafson
Rick Gustafson
Executive Officer

Corky Kirkpatrick
Corky Kirkpatrick
Councilor, District 4

RG/CK/MH/gl/7912B/D1

Enclosure
cc: Governor Vic Atiyeh
Regional Councils in Oregon
Mr. Harold Steinberg
James Kelly, OMB
Winnie Austerman, OMB
Federal Agency Contacts for Executive Order 12372

METRO

METROPOLITAN SERVICE DISTRICT
Providing Zoo, Transportation, Solid Waste and
other Regional Services

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527 SW Hall St.
Portland, OR
97201
503/221-1646

March 4, 1983

The Honorable Dave Durenberger
Chairman, Subcommittee on Intergovernmental Relations
U.S. Senate
Washington, D. C. 20510

Dear Senator Durenberger:

Once again, we appreciate the opportunity to speak on the proposed regulations guiding Executive Order 12372, which replaces the A-95 Review system. I regret I cannot attend your hearing on March 3.

As you are aware, we still question the legality of the new policy as it relates to intergovernmental relations. It is written in very general terms. The fact sheet accompanying the proposed regulations does not clearly spell out the role for Areawide Clearinghouses if a state chooses not to have a review process. Interstate issues related to project review are not detailed.

There is also an absence of clarity about the actual involvement of locally elected officials, especially as it relates to any change in a plan the state might adopt. It appears that the list of programs that are required to be reviewed could change without any local input.

The State of Oregon and the Metropolitan Service District have found the A-95 Review process to be a very effective tool for communicating proposed federal activities to locally elected officials. We have requests from local governments to retain an effective intergovernmental review process.

I believe Congress needs to question whether Executive Order 12372 does in fact carry out the intent of the Intergovernmental Cooperation Act of 1968 and consider other approaches in implementing the Act.

Thank you for holding another hearing on this matter. Please see the attached comments from the Metropolitan Service District on the new process for Intergovernmental Review of Federal Programs.

Sincerely,

Corky Kirkpatrick
Corky Kirkpatrick
Councilor, District 4

CK/MH/gl
7913B/D1

Attachments

Metropolitan Council
300 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

Telephone (612) 29

March 8, 1983

#5062

SUBCOMMITTEE ON
RECEIVED
MAR 21 1983
INTERGOVERNMENTAL RELATIONS

#3042

Senator David Durenberger
Room 353
Russell Senate Office Building
Washington, D.C. 20510

RE: Responses to Agency Proposal Rules for the
Implementation of Executive Order 12372

Dear Senator Durenberger:

Enclosed are copies of our letters to most of the departments and agencies that published proposed rules on January 24, 1983. We have two or three more to finish and will forward them to you as soon as possible.

Sincerely,

John Rutford

John K. Rutford
Referral Coordinator

JKR:dh
Attachments

Metropolitan Council
300 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55[illegible]

Telephone (612) [illegible]

March 7, 1983

Mr. Chester Glod
Assistant Management and Procurement Service
Regional Office Building No. 3, Room 4082
400 Maryland Avenue, S.W.
Washington, D.C. 20202

RE: Intergovernmental Review of Department of Education
Programs and Activities, Implementation of
Executive Order 12372

Dear Mr. Glod:

Attached is a copy of the Metropolitan Council's letter to the Office of Management and Budget concerning the proposed implementation of Executive Order 12372. The comments and suggestions relate to the general proposal as well as to your proposal, Department of Education rules as published in the Federal Register on January 24, 1983.

The letter to OMB did not contain any comments on the proposed exclusions from Executive Order 12372. The exclusions and inclusions proposed by the Department of Education have been carefully examined by this agency and we find that both groups are reasonable and are agreeable to the Metropolitan Council. We would like to take this opportunity, however, to point out to you how valuable it is to us to know what research activities are being proposed to be conducted in our area of jurisdiction. While we do not want to suggest a review role of these programs, knowledge of the proposals would allow us to contact the applicant and make available to this person or agency information we have in our possession, suggestions for improvement of the research, our assistance, and possible collaboration. We cannot do this if we do not have knowledge of the proposed research.

In addition we want to be able to secure data from these studies at the earliest opportunity. The evaluative and statistical data these projects provide could be important to the implementation of adopted Council policies and the development of future policies and plans in public safety and juvenile justice. We have made use of the findings of these federally funded research projects in the past and would like to be able to continue to do so. We hope that arrangements can be made in your department so that we may obtain knowledge of research proposals at an early stage. At this point are are particularly interested in programs on your exclusion list. These three programs are:

An Equal Opportunity Employer

1. Research, Development and Demonstration Activities and Programs of the National Institute of Education (84.117)
2. Research Activities of the National Center for Educational Statistics (no number)
3. Research, Development and Demonstration Activities and Programs of the Center for Educational Improvement (no number)

Thank you very much for this opportunity to comment on your proposed rules.

Sincerely,

John K. Rutford

John K. Rutford
Referral Coordinator

JKR:dh
Attachment
cc: Harold I. Steinberg, Office of Management and Budget
Thomas Harren, Minnesota Department of Energy, Planning and Development

Metropolitan Council
300 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota

Telephone (612)

March 7, 1983

Office of Legal Policy
Room 4234
Department of Justice
Washington, D.C. 20530

RE: Intergovernmental Review of Department of Justice
Programs and Activities, Implementation of
Executive Order 12372

Dear Sirs:

Attached is a copy of the Metropolitan Council's letter to the Office of Management and Budget concerning the proposed implementation of Executive Order 12372. The comments and suggestions relate to the general proposal as well as to your proposal, Department of Justice rules as published in the Federal Register on January 24, 1983.

The letter to OMB did not contain any comments on the proposed exclusions and inclusions of Executive Order 12372. The exclusions and inclusions proposed by the Department of Justice have been carefully examined by this agency and we find that both groups are reasonable and are agreeable to the Metropolitan Council. We would like to thke this opportunity, however, to point out to you how valuable it is to us to know what research activities are being proposed to be conducted in our area of jurisdiction. While we do not want to suggest a review role of these programs, knowledge of the proposals would allow us to contact the applicant and make available to this person or agency information we have in our possession, suggestions for improvement of the research, our assistance, and possible collaboration. We cannot do this if we do not have knowledge of the proposed research.

In addition we want to be able to secure data from these studies at the earliest opportunity. The evaluative and statistical data these projects provide could be important to the implementation of adopted Council policies and the development of future policies and plans in public safety and juvenile justice. We have made use of the findings of these federally funded research projects in the past and would like to be able to continue to do so. We hope that arrangements can be made in your department so that we may obtain knowledge of research proposals at an early stage. At this point are are particularly interested in programs on your exclusion list. These four programs are:

1. Office of Juvenile Justice and Delinquency Prevention - Research and Evaluation Programs of the National Institute of Juvenile Justice and Delinquency Prevention (16.542)
2. Bureau of Justice Statistics - Statistics on Crime and Criminal Justice Program (16.551)
3. National Institute of Justice-Research and Development Project Grants (16.560)
4. National Institute of Corrections - Research and Policy Formulation (16.602)

In the near future we will be contacting your department again on this matter.

Thank you very much for this opportunity to comment on your proposed rules.

Sincerely,

John K. Rutford

John K. Rutford
Referral Coordinator

JKR:dh
Attachment
cc: Harold I. Steinberg, Office of Management and Budget
Thomas Harren, Minnesota Department of Energy, Planning and Development

Metropolitan
300 Metro Square
Seventh and Robert
St. Paul, Minneso

Telephone (612)

March 8, 1983

Mr. Martin D. Teckler
Associate General Counsel
Small Business Administration
1441 L Street N.W.
Washington, D.C. 20416

Subject: Intergovernmental Review of Small Business Administration Programs and Activities, Implementation of Executive Order 12372

Dear Mr. Teckler:

Attached is a copy of the Metropolitan Council's letter to the Office of Management and Budget concerning the proposed implementation of Executive Order 12372. The comments and suggestions relate to the general proposal as well as to your proposal, Small Business Administration rules as published in the Federal Register on January 24, 1983.

The letter to OMB did not contain any comments on the proposed exclusions or inclusions of Executive Order 12372. The exclusions and inclusions proposed by the Small Business Administration have been carefully examined by this agency, and we find that clarification should be provided as to the intent of the exclusions listed in Item 1(a) of this attachment. Specifically, we are concerned that the exclusion of the SBA 503 loan program would significantly reduce the opportunity for coordination between a community development corporation and the local unit of government(s) within a corporation boundary.

The provision of an adequate infrastructure is essential to business development. In the past, the role of the state and local units of government has been to provide needed capital investments before the infrastructure could be put in place. It seems logical, therefore, that information relative to need, timing and location of infrastructure investments must be shared between the community development corporation, the state and local units of government.

The exclusion, if retained, would send a message that this kind of coordination is not necessary or needed.

I am aware of the need to reduce government regulations where not needed, and to reduce the amount of paper work needed to process grants and loans. My comments are not intended to require that individual applications prepared by business establishments to a community development corporation would require a review by a state or local unit of government.

Thank you very much for this opportunity to comment on your proposed rules.

Sincerely,

John K. Rutford

John K. Rutford
Referral Coordinator

JKR:dh
Attachment

An Equal Opportunity Employer

Metropolitan Council
300 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55
Telephone (612) 2

March 7, 1983

Administrator of Veterans Affairs (271A)
810 Vermont Avenue, N.W.
Washington, D.C. 20420

RE: Intergovernmental Review of Veterans Administration
Programs and Activities, Implementation of
Executive Order 12372

Dear Sir:

Attached is a copy of the Metropolitan Council's letter to the Office of Management and Budget concerning the proposed implementation of Executive Order 12372. The comments and suggestions relate to the general proposal as well as to your proposal, Veterans Administration rules as published in the Federal Register on January 24, 1983.

The letter to OMB did not contain any comments on the proposed exclusions from Executive Order 12372. The exclusions proposed by the Veterans Administration have been carefully examined by this agency and we find that the Metropolitan Council wishes to disagree most strongly with the exclusion of the Home Guarantee Program (38 U.S.C. 1801) from the scope of E.O. 12372.

The Council objects to this exclusion because this program does directly affect the planning and development of local governments. While this program does not assist directly the developer or the home buyer, the availability of this loan program to developers does directly affect local governments by creating demands for public services such as sewers, streets, police, schools and related maintenance and administrative efforts. How this development pressure fits local development strategies should affect VA loan guarantee decisions. Local information about environmental hazards, health risks, or planned extensions of regional highway, airport, or park systems should be solicited by the Veterans Administration. The fact that the percentage of new housing construction involved is small does not mean that there is no direct affect. Sanitary sewer systems may have to be extended because of individual waste system failures or other public infrastructure costs may be increased by development that is not adequately coordinated with areawide plans.

We disagree with the claim that practically and philosophically the inclusion of the loan guarantee program as part of the consultation process has not proven feasible. Unlike similar programs conducted by the Federal Housing Administration and the Farmers Home Administration, the VA programs have not been administered locally in such a way as to encourage useful advice through the consultation process. The consultation process should be conducted concurrently with other application processing activities - no delay for builders should occur unless significant reasons for further deliberation are generated by the process. The VA's lack of initiative in supporting A-95 review requirements should not be accepted as an indication that consultation procedures cannot prove to be feasible.

The Metropolitan Council has a wealth of information available that is relevant to considerations about the location and construction of new housing in the Twin Cities Area. This information is available as a result of state statutory authority to plan for the coordination of regional services and oversee a community- and county-level comprehensive planning process. Local citizens generally, and veterans seeking VA loan guarantees in particular, will be denied the full intended benefits of this statutory authority if the Veterans Administration does not include the Home Loan Guarantee Program within the scope of the consultation process under Executive Order 12372.

Thank you very much for this opportunity to comment on your proposed rules and we would be most happy to discuss this matter in much more detail with representatives of the Veteran's Administration.

Sincerely,

John K. Rutford
Referral Coordinator

JKR:dh
Attachment
cc: Harold I. Steinberg, Office of Management and Budget
Thomas Harren, Minnesota Department of Energy, Planning and Development

Metropolitan Council
300 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

Telephone (612) 291-6359

March 9, 1983

Mr. Gordon Boe
Special Assistant to the Deputy Undersecretary
for Intergovernmental Affairs
Room 632-F
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Intergovernmental Review of Department of Heath and Human Services Programs and Activities, Implementation of Executive Order 12372

Dear Mr. Boe:

Attached is a copy of the Metropolitan Council's letter to the Office of Management and Budget concerning the proposed implementation of Executive Order 12372. The comments and suggestions relate to the general proposal as well as to your proposal, Department of Health and Human Services rules as published in the Federal Register on January 24, 1983.

The letter to OMB did not contain any comments on the proposed exclusions and inclusions of Executive Order 12372. The exclusions and inclusions proposed by the Department of Justice have been carefully examined by this agency and we find that both groups are reasonable and are agreeable to the Metropolitan Council. We would like to take this opportunity, however, to point out to you how valuable it is to us to know what research activities are being proposed to be conducted in our area of jurisdiction. While we do not want to suggest a review role of these programs, knowledge of the proposals would allow us to contact the applicant and make available to this person or agency information we have in our possession, suggestions for improvement of the research, our assistance, and possible collaboration. We cannot do this if we do not have knowledge of the proposed research.

In addition we want to be able to secure data from these studies at the earliest opportunity. The evaluative and statistical data these projects provide could be important to the implementation of adopted Council policies and the development of future policies and plans in public safety and juvenile justice. We have made use of the findings of these federally funded research projects in the past and would like to be able to continue to do so. We hope that arrangements can be made in your department so that we may obtain knowledge of research proposals at an early stage. At this point are are particularly interested in programs on your exclusion list. These five programs are:

1. Health Services Research and Development - Grants (13.226)
2. Social Services Research and Demonstration (13.647)
3. HCFA Research (13.766)
4. Aging Research (13.866)
5. Family Planning Services Delivery Improvement Research Grants (13.974)

An Equal Opportunity Employer

Thank you very much for this opportunity to comment on your proposed rules.

Sincerely,

John K. Rutford

John K. Rutford
Referral Coordinator

JKR:dh
Attachment
cc: Harold I. Steinberg, Office of Management and Budget
    Thomas Harren, Minnesota Department of Energy, Planning and Development

Metropolitan Council
300 Metro Square Building
Seventh and Robert Street
St. Paul, Minnesota
Telephone (612)

March 7, 1983

Lyn Zimmerman
USDA Office of Finance and Management
Room 10-A
Administration Building
Washington, D.C. 20250

RE: Intergovernmental Review of Department of Agriculture Programs and Activities, Implementation of Executive Order 12372

Dear Lyn Zimmerman:

Attached is a copy of the Metropolitan Council's letter to the Office of Management and Budget concerning the proposed implementation of Executive Order 12372. The comments and suggestions relate to the general proposal as well as to your proposal, Department of Agriculture rules as published in the Federal Register on January 24, 1983.

The letter to OMB did not contain any comments on the proposed exclusions from Executive Order 12372. The exclusions proposed by the Department of Agriculture have been carefully examined by this agency and we find that these exclusions are reasonable and are agreeable to the Metropolitan Council. The proposed exclusions will have no significant effect on the plans and policies the Council uses to review projects in fulfillment of its responsibility to coordinate the planning and development of this metropolitan area.

Thank you very much for this opportunity to comment on your proposed rules.

Sincerely,

John K. Rutford

John K. Rutford
Referral Coordinator

JKR:dh
Attachment
cc: Harold I. Steinberg, Office of Management and Budget
Thomas Harren, Minnesota Department of Energy, Planning and Development

Similar letters sent to:

Stephen Halloway, Associate General Counsel for Legislation and Regulation, Department of Commerce; Director, Office of Economic Adjustment, Department of Defense; Financial Assistance Policy Branch, Department of Energy; Office of Acquisition and Property Management, Department of the Interior.

Seth D. Zinman, Associate Solicitor for Legislation and Legal Counsel, Department of Labor; Docket Clerk, Department of Transportation; ACTION Agency, Office of General Counsel; Central Docket Section (A-130), Environmental Protection Agency; Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency; General Services Administration.

James M. Bayne, Real Property Management Branch, NASA.

Robert Wade, General Counsel for Management, National Endowment for the Arts.

Bruce Carnes, Office of Planning and Policy Assessment, National Endowment for the Humanities; Office of the General Counsel, National Science Foundation; Director, Office of Program Planning, Real Estate and Buildings Department, U.S. Postal Service.

MID WILLAMETTE VALLEY
COUNCIL OF GOVERNMENTS
400 SENATOR BUILDING, 220 HIGH ST. N.E., SALEM, OREGON 97301 Telephone (503) 588-6177
CHAIRMAN: KENNETH N. KNUTSON
YAMHILL COUNTY EDUCATION SERVICE DISTRICT • VICE CHAIRMAN: RANDALL FRANKE
COMMISSIONER, MARION COUNTY • DIRECTOR: ALAN H. HERSHEY

March 9, 1983

Senator Dave Durenberger, Chairman
Subcommittee on Intergovernmental Relations
U.S. Senate
Committee on Governmental Affairs
Washington, DC 20510

Dear Senator Durenberger:

Attached is a copy of a letter recently sent to Mr. James Kelly, Deputy Associate Director of the Office of Management and Budget regarding Executive Order 12372.

The Board of Directors of the Council of Governments wish to have your Subcommittee on Intergovernmental Relations also advised of our position.

Sincerely,

Alan H. Hershey

Alan H. Hershey
Director

aml

Attachment

cc Richard Hartman, Executive Director
National Association to Regional Councils

MEMBER GOVERNMENTS—COUNTIES: Marion, Polk **CITIES:** Aumsville, Aurora, Carlton, Dallas, Gervais, Hubbard, Independence, Jefferson, Lafayette, McMinnville, Monmouth, Mt. Angel, Newberg, Salem, Sheridan, Silverton, Sublimity, Willamina, Woodburn **SPECIAL DISTRICTS:** Salem School District 24J, Marion County Fire District #1, Marion County Education Service District, Yamhill County Education Service District, Salem Area Mass Transit District, Polk and Yamhill Counties Soil & Water Conservation Districts, Chemeketa Community College

MID WILLAMETTE VALLEY
COUNCIL OF GOVERNMENTS

400 SENATOR BUILDING, 220 HIGH ST. N.E., SALEM, OREGON 97301 Telephone (503) 588-6177

[illegible] • DIRECTOR: [illegible]

March 4, 1983

Mr. James Kelly
Deputy Associate Director
Office of Management and Budget
10235 New Executive Office Building
Washington, DC 20503

RE: COMMENT ON PROPOSED IMPLEMENTING FEDERAL REGULATIONS FOR EXECUTIVE ORDER 12372

Dear Mr. Kelly:

This is to request four changes in proposed regulations implementing Executive Order 12372. These recommendations represent a unanimous vote of our 17 member Board of Directors representing 29 local governments in Marion, Polk and Yamhill counties, Oregon. Our central city is Salem, the state capitol.

1. *We urge that state and local government be provided a minimum of 45 days rather than 30 days to review proposed grants or direct federal actions.* With all communications being funneled twice through a single contact point (once in and once out), more time is going to be needed for the State Clearinghouse to get communications circulated throughout the state. This is especially true of western states with very large land areas.

2. *We also urge that the proposed 10 day grace period during which a federal agency may not implement a program contrary to the recommendation of a state contact point be extended to 15 days.* We believe the extra five days we request will significantly assist in providing opportunities for us to prevail on our Congressional leadership to intervene in the event that the Secretary's explanation of the basis of the contrary decision is not satisfactory.

3. *We urge acceptance of and response to divergent recommendations of local governments and/or state agencies which may be received through the state's single point of contact, when it is certified that good faith efforts to resolve differences have been made and found unsuccessful.* This is our most important recommendation, and is a key to effective operation of a single point of contact within the state. In the instance we cite here, the obligation upon the federal agency to accomodate or explain would still apply when the federal agency's proposed action differed from any one of the divergent recommendations forwarded under such a set of circumstances.

23-000 291

Mr. James Kelly
Page 2
March 4, 1983

4. *We cannot tolerate the proposed regulation of the Department of Education to exclude from the review process projects which would be implemented by private non-profit corporations.* There is no excuse or rationale to exclude any group of private or public agencies from review of domestic assistance programs. This is especially the case as it applies to private agencies when the current Administration is proposing to make wider use of private initiatives in delivery of public services.

We request that copies of our formal comments herein be furnished by your office to the 27 rule making agencies which you coordinated in order to promulgate the regulations. We simply do not have a list with all the appropriate addresses and contact points nor the resources to get them there in a timely fashion.

In closing, we express appreciation for the opportunity to file this formal comment. We also want you to know that we believe it is possible to make a single point of contact work in Oregon. We are diligently working cooperatively with the state to establish a review system consistent with the proposed regulations. However, to make it fully workable we need your assistance on the above four comments.

Sincerely,

Kenneth N. Knutson

Kenneth N. Knutson
Chairman
Board of Directors

aml

cc: Robert Montgomery, Administrator, Intergovernmental Relations Divison,
State of Oregon

JOHN V EVANS
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
BOISE 83720

March 8, 1983

David Stockman, Director
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Dear Mr. Stockman:

The following comments pertain to Presidential Executive Order 12372 and the proposed federal agency regulations published in the January 1983 Federal Register. It is my understanding that OMB will forward copies of our response to each of the federal agencies.

I want to compliment the Administration for its effort to improve the over-all process of intergovernmental review of federal financial assistance and direct federal development affecting state and local government. The intent to replace the federally-mandated OMB Circular A-95 review system with state-designed processes may, with modifications and additions to regulation language, prove to be a more effective process. While acknowledging federal efforts put into redefining the original review mechanism, I feel it necessary to express the concerns of this office and participating state areawide clearinghouses regarding our evaluation of the proposed regulations and OMB's involvement in the overall implementation of the Executive Order. Our concerns are as follows:

ADMINISTRATIVE CONTROLS

The President has demonstrated his commitment to intergovernmental review by upgrading this policy from an OMB Circular status guideline to an Executive Order. I am convinced, however, that without strong and consistent internal controls within the federal funding agencies that intergovernmental review and comment under the new Executive Order will be even less effective than the current process.

The proposed regulation language is of concern because of considerable flexibility to federal agencies participating in the review process:

-The notification of non-accommodation decisions as defined in the draft language is unsatisfactory. Will states receive standardized responses in cases of non-accommodation or will responses be project-specific? We are concerned by the options of notification available: phone call, letter, meeting or written response made only at the Governor's request.

-The submission and review time-frames are simply unworkable 30 days for review is insufficient time to receive, prepare and circulate applications for statewide review. Too often there are late, incomplete and/or inaccurate application submissions which need further attention before or during the review process. In addition, there is no time for meaningful review and/or negotiation at the local level. Local governments simply cannot adequately review and comment on projects within 25-30 days. We ask that the minimum review time-frame for federal financial assistance projects be extended to 60 days. Futhermore, we are concerned that frequent exceptions to the 30 day review may be taken by federal agencies which would further weaken the process.

-The time-frame allotted to federal agencies in acting on non-accommodation decisions is also an issue of concern. Also in question is the identification of persons in charge of decision-making. Will they be accessible and readily available for consultation when necessary?

-The time-frame for review and comment on projects involving direct federal development is too brief in view of the anticipated need for mutual review and comment by jointly-affected states. Thorough review and analysis of EIS publications would be difficult within a 40-45 day period.

-We are uncertain about federal definitions of "emergencies" which may be cited as reasons to make exceptions to regulations. We are concerned that regulation language may allow for exceptions that will severely weaken the process.

We recognize that a certain amount of flexibility is necessary. However, without guarantees of accountability, there is substantial risk that this flexibility may be abused or be perceived to be abused. This perception has occurred under the original process and has weakened the effectiveness and credibility of the mechanism. Accordingly, I strongly urge OMB to consider the following suggestions if they are not already under discussion:

-Require each federal agency to designate a highly placed administrative official within the agency to act as the single-point-of-contact accountable for all noncompliance decisions.

-Require project-specific responses for all non-accommodation decisions. Responses should be made in writing to the state's single-point-of-contact.

-Annually, the Federal Register should list all instances of non-accommodation decisions on a state-by-state basis.

-Extension of review time-frames are essential if thorough review and comments are to be performed by local governmental entities.

GENERAL CONCERNS

In addition to administrative control concerns, I firmly believe the regulations must be strengthened in the following areas:

-Inclusion of non-governmental entities applying for federally financed assistance is essential to our state's review process. Some non-profit organizations receiving federal funds may well provide services which are duplicative of or inconsistent with other governmental or nonprofit services.

-Directives in the grant application material should inform applicants of the necessity of review and comment of those specified programs under which they are applying for financial assistance. It is absolutely essential to the effectiveness of the review mechanism that the state's single-point-of-contact for initiating review be given ample time and adequate project information to perform a timely review.

-The Catalog of Federal Domestic Assistance or the April Federal Register could provide invaluable assistance by publishing a composite listing of all federal programs and their CFDA numbers in which, in a clear manner, all inclusions and exclusions for intergovernmental review could be summarized.

-In the initial stages of revamping intergovernmental review policies funding was briefly addressed in terms of cost-sharing between state and federal governments. It now is evident that states, seen as the benefitors of this process, must bear the costs. Presently, and in the foreseeable future, to fund this mechanism adequately is of great concern to Idaho. Adequate funding is critical in effecting a well-run process.

In the final analysis, I commend the intent to improve the intergovernmental review process. Without consideration of the above-mentioned concerns, we feel that the review and comment functions will be essentially reduced to information dissemination. The State of Idaho and its regional councils of government believe that

implementation of a meaningful consultation process rests on cooperation between federal and state and local governments.

Sincerely,

John V Evans

JOHN V. EVANS
GOVERNOR

cc: David Dougherty, Federal Regional Council
The Honorable David Durenberger, Chairman
Subcommittee on Intergovermental Affairs
The Honorable David Leroy, Lt. Governor
The Honorable Tom Stivers, Speaker of the House
Executive Directors, Idaho State Planning Agencies

JVE:SW:pr

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

March 9, 1983

Honorable David Durenberger
United States Senate
Chairman, Senate Intergovernmental
 Relations Subcommittee
Room 507 - Carroll Arms Building
301 First Street, N.E.
Washington, D.C. 20510

Dear Senator Durenberger:

It was a pleasure meeting you after the March 3, 1983 Oversight Hearing on OMB Circular A-95. As I mentioned at that time, the Metropolitan Washington Council of Governments (COG) is the interstate regional organization for the Washington Metropolitan area. The region covers the District of Columbia and portions of the States of Maryland and Virginia including Councilman Scott Fosler's jurisdiction, Montgomery County, Maryland, (see attached map).

Among its responsibilities COG has served as the interstate areawide A-95 clearinghouse since designation by OMB in 1969. In this capacity, COG's clearinghouse responsibilities have served a very useful and effective format for soliciting and developing a unified voice on matters of interstate concern.

In response to your request at the March 3, 1983 Oversight Hearing for a real life example of the interstate process at work and our conversation after the meeting, I have enclosed for your information the region's unified interstate comments and individual local comments on a recently reviewed Federal proposal of the National Capital Planning Commission entitled "Proposed Federal Facilities Element - Comprehensive Plan for the National Capital." This proposal put forth proposed Federal policies for the future use of Federal facilities in the Washington Metropolitan Area.

Review of this proposal involved developing an interstate consensus. This consensus was presented in the form of the enclosed "Metropolitan Clearinghouse Review Comments." These comments were reviewed and refined by subcommittees composed of local elected officials and their representatives. Final approval of the comments was made by the COG Board of Directors on February 9, 1983

District of Columbia • Arlington County • Fairfax County • Loudoun County • Montgomery County • Prince George's County • Prince William County
Alexandria • Bowie • College Park • Fairfax City • Falls Church • Gaithersburg • Greenbelt • Rockville • Takoma Park

As you know, neither Executive Order 12372 nor the implementing agency regulations issued on January 24, 1983 specifically endorse continued use of existing interstate clearinghouses as a format for developing a consensus on interstate proposals. More specifically, a representative section of the January 24, 1983 Federal Register regulations included below makes no mention of soliciting local concerns through interstate clearinghouses.

> For example, the proposed regulations of the U.S. DOT do not require states to coordinate with each other on proposed Federal assistance or direct development having an impact on an interstate area. "However, the Department strongly encourages each affected state to share its comments with and obtain the views of other affected states, using the other state's single point of contact, if there is one, or an appropriate state official if there is not a single point of contact. The Department encourages states to reconcile differences where they exist so that the states can present the Department with a unified position. If the affected states provide the Department with conflicting recommendations, the Department will, with respect to states that have established a process under the Order, accommodate recommendations to the extent possible and explain its nonaccommodations of other points of view as provided in §17.11."

(Department of Transportation, Proposed Rules, Federal Register, Vol. 48, No. 16, Monday, January 24, 1983 pp. 3180-3191.)

While it appears that the three states of COG's interstate region will continue to recognize and make use of the COG interstate clearinghouse, the usefulness of such clearinghouses may not be obvious in other areas. If, due to oversight or simply lack of understanding, interstate clearinghouses are not incorporated into the new state processes, local representation on interstate decisionmaking might either not be represented or at worst may be represented contrary to local desires. And, of course, this can happen under the proposal even though state law gives final decision authority on the matter to its local governments.

I sincerely hope that the enclosed example will provide you with a better understanding of how our clearinghouse may assist in developing a consensus on proposals of interstate concern. While COG may be a unique case in the United States given the substantial Federal presence in the Washington Metropolitan Area, I am sure this example can speak for other active interstate areas as well.

I greatly appreciate this opportunity to submit this information to you and hope that it will have an influence on your judgment and on the new Federal agency regulations now under review. If I may be of assistance in explaining any aspect of the enclosed information with you or your staff please call me at 223-6800.

Thank you for this opportunity to share our information and concerns with you.

Sincerely yours,

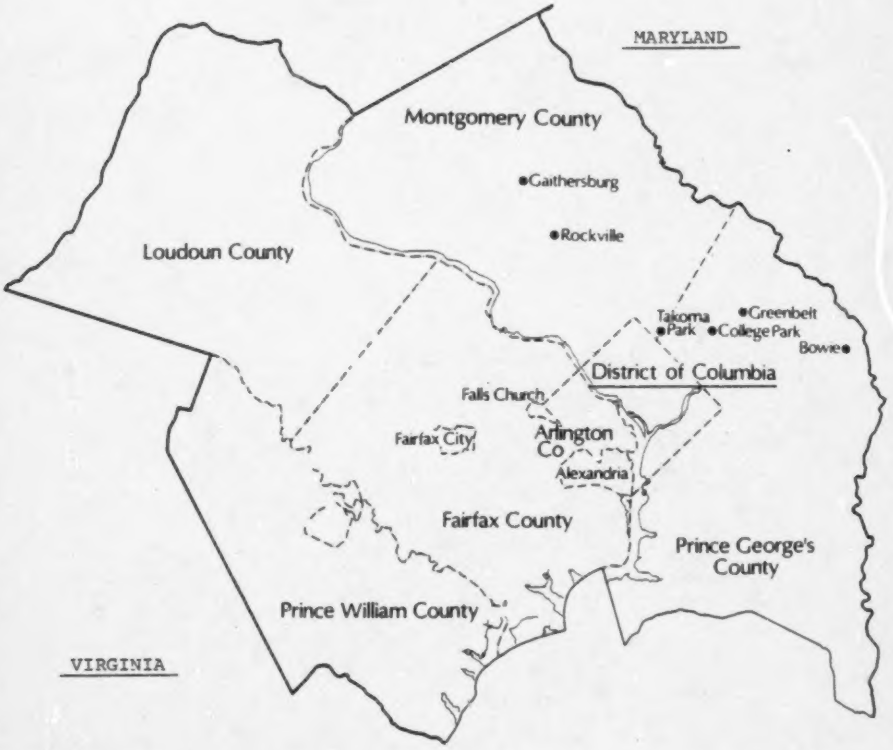
Robert T. Grow

Robert T. Grow
Metropolitan Clearinghouse
Coordinator

Enclosure

cc: David Stockman, OMB
Walter A. Scheiber, COG
John Bosley, COG
John McClain, COG

INTERSTATE REGION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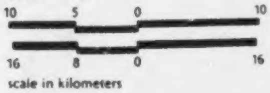
Prince George's County
Prince William County
VIRGINIA

Metropolitan Washington Region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scale in kilometers

MARYLAND
DEPARTMENT OF STATE PLANNING
301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201-2365

HARRY HUGHES
GOVERNOR

CONSTANCE LIEDER
SECRETARY

March 21, 1983

Honorable David Durenberger
Chairman, Subcommittee on
  Intergovernmental Relations
U.S. Senate
Washington, D.C. 20510

Dear Senator Durenberger:

Thank you for your letter of March 11 regarding the subcommittee hearing on intergovernmental consultation. I agree that the subject is of utmost importance, particularly to state and local government.

I am enclosing copies of several letters typical of those sent to 22 federal agencies regarding the proposed rules to implement E.O. 12372. In summary the primary concerns we desire OMB and other federal agencies to address are as follows:

1. The federal agency restraint on program coverage.
2. The procedures for soliciting comments may prove to be unworkable.
3. The methods to be used to assure federal agency compliance and response.
4. The inadequacy of the proposed review period of 30 days.

In addition to these concerns, the philosophy behind modification of the A-95 process, may substantially change institutional relationships.

Certainly, the Governmental Affairs Committee should be aware of the direction of these changes.

If I can be of further assistance, please let me know.

Very sincerely yours,

Constance Lieder

Constance Lieder
Secretary of State Planning

cc: Guy W. Hager

CL:GWH:pm

TELEPHONE: 301-383-7700
TTY for Deaf: 301-383-7555
OFFICE OF SECRETARY

MARYLAND
DEPARTMENT OF STATE PLANNING
301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201-2365

HARRY HUGHES
GOVERNOR

CONSTANCE LIEDER
SECRETARY

March 10, 1983

Harold I. Steinberg
Associate Director for Management
Office of Management and Budget
726 Jackson Place, N.W.
Washington, D.C. 20503

RE: Draft Rule Implementing Executive Order 12372
Intergovernmental Review of Federal Programs,
Federal Register, Vol. 48, No. 16, 1/24/83

Dear Mr. Steinberg:

As the Governor's designated representative for Implementation of Federal Executive Order 12372, we have prepared comments on the referenced proposed rules. Enclosed please find a copy of each response which was separately addressed to the appropriate federal agency.

We want to compliment you, Mr. James Kelly and his fine staff for their responsiveness and tremendous efforts in undertaking this ambitious process. We have very much viewed the President's initiative as an opporutnity to jointly enhance and revitalize the intergovernmental consultation process. We recognize the difficulty in getting all federal agencies to strive toward consistency in their consultation with state and local governments.

We consider the basic thrust of the federal agency rules to be consistent with the spirit of the Executive Order. However, there are several concerns we desire to share with you. Although, no organized effort has been made to coordinate the responses of the various states, we do believe our concerns are widely shared by other jurisdictions.

Program Coverage

We were disappointed in the proposed program exclusion by some of the federal agencies. It was our understanding from your office that the state's in consultation with local governments would have the opportunity to select the scope based on our needs. The general guidelines stated in the President's press release on the Executive Order have been extended considerably.

We feel that the program coverage criteria should be modified in the following manner:

1.) The term "directly affecting" state and local government has been too narrowly construed;

TELEPHONE: 301-383-7700
TTY for Deaf: 301-383-7556
OFFICE OF SECRETARY

2.) The exclusion of projects from non-governmental entities is too broad. A more appropriate criteria would examine the affect of the funding activity, not the recipient's nature.

3.) The exclusion of research projects should be re-examined. In addition to the three inclusion criteria provided, any substantial construction, rehabilitation or physical change to the natural environment should also be considered.

4.) The exclusion of housing finance programs can not be accepted.

In summary, the states should have an opportunity to continue to review all programs presently covered in the scope of A-95. The criteria used by federal agencies for identifying program exclusions is quite broad in its affect and is therefor not acceptable. We strongly suggest the opportunity of choice be provided as originally intended.

Compliance

We continue to be concerned as to compliance by federal agencies to the spirit of the Executive Order. We do not see how compliance can or will be monitored or administratively insured, except by the initiation of the state. We also wonder how all federal agencies will consistently deal with all states.

In terms of non-accommodation, we desire all such actions to be explained in writing. Given a cooperative environment, this should not be a burdensome task for the federal agencies. We also desire the federal agency administrator to review any request by the Governor for re-consideration of a non-accommodation action.

Response Time

The proposed 30 day review period is insufficient to conduct a meaningful intergovernmental review. We recommend a 45 day period for financial assistance applications and a 60 day period for direct action and interstate actions. In cases where earlier consultation has occurred, a 30 day period may be appropriate.

Several other concerns are addressed in the specific response to the federal agencies. Your attention to these issues would be appreciated. I believe it would be most useful if you can advise us of areas for change prior to publication of final rules so we may proceed with formulation of the state process.

If we can be of further assistance in refining the concerns of this state, please let me know.

Very sincerely yours,

Constance Lieder gwh

Constance Lieder
Secretary of State Planning

cc: Governor Hughes

CL:GWH:pm

MARYLAND
DEPARTMENT OF STATE PLANNING
301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201-2365

HARRY HUGHES
GOVERNOR

CONSTANCE LIEDER
SECRETARY

March 9, 1983

Office of General Counsel
Rules Docket Clerk
Room 10278, HUD
451 Seventh Street, S.W.
Washington, D.C. 20410

RE: Proposed Rule for the Intergovernmental Review of
the Department of Housing and Urban Development Programs and Activities -
Federal Register, Vol. 48, No. 16, 1/24/83

Dear Sir:

As the Governor's designated representative for the implementation of Federal Executive Order 12372, we are submitting the following comments on the referenced rule. Every effort has been made to develop these comments in consultation with local governments and state and regional agencies. We appreciate this opportunity to comment and hope our views will be carefully considered prior to final rulemaking.

In general, we believe HUD has not made a good faith effort to reflect the spirit of the President's executive order. We do not agree with the proposed blanket exclusion of HUD programs. In general, program coverage should include any substantial construction, rehabilitation, or alteration of the natural environment.

We believe clarification should be provided in the rule stipulating that a "state adopted process" shall include appropriate comments from regionally constituted bodies, designated as area-wide agency under the Demonstration Cities and Metropolitan Development Act.

We strongly recommend that proposed final rule be published on April 30, 1983, and the normal thirty day period between the publication date of the final rule and its effective date be maintained. This will give the States a final opportunity to comment on program listings and adjust state adopted processes in accordance with the final rule. The implementation schedule should occur as soon as the federal agency can make the transition to the state adopted process, and the A-95 procedures should remain operative until that time, irrespective of the April 30th date.

We support and desire comments originating from delegated regional or local officials to still be transmitted to the Federal agency through the "single state contact". Doing this would ensure responsiveness and provide for necessary communications coordination.

TELEPHONE: 301-383-7700
TTY for Deaf: 301-383-7555
OFFICE OF SECRETARY

We support a more thorough effort to incorporate other relevant federal consultation requirements with State and local officials through the State adopted process. In this regard, we desire clarification as to applicability of coastal zone management consistency and the state historic preservation consultation requirements. Can these requirements be incorporated in the state process? We also request clarification as to the requirements of EIS.

The following are specific comments on each section of the proposed Rule:

1. Section 52.2 (definitions): The definition section should include definitions for federal financial assistance, direct federal development and federally required state plans.

2. Section 52.3 (programs and activities): Add language stating the following, "unless specifically prohibited by Federal law, the opportunity for selection of federal programs and activities to be reviewed under the state adopted process shall be left to the discretion of the state and local governments".

3. Section 52.4 (administrative responsibility):
   -(b)(1): The state and local governments support the concept of a single state contact for official communications and federal agencies.

   -(b)(2): For clarification this section should be reworded as follows, "Communicates with state and local officials as early in a program planning cycle as is reasonably feasible to explain proposed plans and actions and to allow these officials sufficient time to be able to exert meaningful influence on the Agency's course of action".

   -(b)(5): We support phasing out of single purpose organizations created for federal purposes.

4. Section 52.5 (procedures)
   -(a) Notice to HUD is inconsistent with instructions from OMB.

   -(b) Transition should be handled differently allowing for continuation of A-95 procedures until agency effectuates implementation of state adopted process.

5. Section 52.6 (comment)
   -(a): When the state delegates responsibility for originating comments to a local official, the comments should be transmitted through the single state contact to the federal agency.

-(b): The time constraints are not feasible to conduct a meaningful intergovernmental review. We recommend a 45 day period for financial assistance actions unless a notice of intent was initially used; and 60 day period for interstate and direct federal action unless early notice was provided. When prior consultation through notice of notice of intent or early consultation has been provided, then 30 days should be a sufficient period to formulate an official position on the proposed action. Alternatively, if the basic 30 day period is not extended, the State should have the option to extend this review period by 15 days to resolve any policy disagreements should any arise.

-(c): HUD should not accept applications for financial assistance or required plans until prior consultation has been provided through the state adopted process. HUD should advise any applicants of their responsibility to meet state requirements. If the applicant submits its request seeking review through the state adopted process, then the comments should be provided by the applicant and attached to the applicant package. This would provide an opportunity for the applicant to respond to any comments prior to submission to the federal agency.

-(d): We support the criteria for comments outlined in the section analysis. However, we would add a statement with regard to consistency with state, local or regional comprehensive plans or policies.

6. Section 52.7 (accommodation)
-(a)(3): All official explanations of non-accommodation should be in written form. Upon receipt in the single point of contact of a non-accommodation letter, a state or local decision could then be made to request the Governor to seek re-consideration by the Secretary of the federal agency, within the ten day period. In the alternate, the Governor's designee should be able to request a written explanation of non-accommodation. In any case, the ten day period should begin when a written response has been received in the single point of contact concerning a non-accommodation. HUD should consider a method for responding to appeals from the Governor for re-consideration. Any re-consideration response to the Governor on a non-accommodated action should be from the agency Secretary. A statement should be added concerning the fact that a record of non-accomodations will be retained by the federal agency for subsequent evaluation.

-(b): The following language should be added to this subsection: The 10 day waiting period "is intended to permit states to respond to the federal agency in case of non-accommodation before HUD has irrevocably carried out the decision". Language should also be added referencing how the federal agency will consider the state response to the federal decision of non-accommodation.

7. (exclusion list)
The fact that a non-governmental entity is the applicant should not be used by HUD as the criteria for program exclusion. The nature and impact of the proposed activity should be the determinant used to classify which programs should be subject to the rule.

We recommend that all EIS's and Federally required state plans should be subject to the rule. In addition, the following Federal financial assistance programs listed on HUD's exclusion list have been tentatively identified as proposed Federal actions which will be included for coverage under the state process: CFDA #'s 14.105, 14.108, 14.112, 14.115, 14.116, 14.117, 14.118, 14.119, 14.120, 14.121, 14.122, 14.124, 14.125, 14.126, 14.127, 14.128, 14.129, 14.132, 14.133, 14.134, 14.135, 14.137, 14.138, 14.139, 14.141, 14.146, 14.154, 14.157, 14.159, 14.161, 14.163, 14.164, 14.165, 14.207, 14.218, 14.219, 14.221, and 14.229.

The HUD mortgage insurance loan and grant programs and the Block Grant programs are of particular importance to this state. Besides the obvious local interest, state agencies review the proposed actions under these programs for the following major reasons: Compliance with coastal zone and historic preservation requirements, impact on the natural and agricultural land and areas of critical state concern, conflicts with transportation proposals, consistency with state flood plain and sewerage moritoriums and other major plans and objectives. While this State may assume administrative responsibility for the Block Grants in the future, we have not exercised that option at this time. To reiterate, we request that all of the Federal programs listed on HUD's exclusion list be made subject to the rule.

I appreciate your attention to this matter and would welcome an opportunity to review in more detail any of the comments made above.

Very sincerely yours,

Constance Lieder

Constance Lieder
Secretary of State Planning

cc: Governor Hughes

MARYLAND
DEPARTMENT OF STATE PLANNING
301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201-2365

HARRY HUGHES
GOVERNOR

CONSTANCE LIEDER
SECRETARY

March 9,1983

Central Docket Section (A-130)
Docket No. G-82-05
Environmental Protection Agency
Washington, D.C. 20460

RE: Proposed Rule for the Intergovernmental Review of Environmental Protection Agency Programs and Activities - Federal Register, Vol. 48, No. 16, 1/24/83

Dear Sir:

As the Governor's designated representative for the implementation of Federal Executive Order 12372, we are submitting the following comments on the referenced rule. Every effort has been made to develop these comments in consultation with local governments and state and regional agencies. We appreciate this opportunity to comment and hope our views will be carefully considered prior to final rulemaking.

In general, we believe EPA has made a good faith effort to reflect the spirit of the President's executive order. The program coverage appears appropriate. However, any substantial new construction or rehabilitation of facilities or alteration of the natural environment should be included for review.

We believe clarification should be provided in the rule stipulating that a "state adopted process" shall include appropriate comments from regionally constituted bodies, designated as area-wide agency under the Demonstration Cities and Metropolitan Development Act.

We strongly recommend that proposed final rules be published on April 30, 1983, and the normal thirty day period between the publication date of the final rules and its effective date be maintained. This will give the States a final opportunity to comment on program listings and adjust state adopted processes in accordance with the final rules. The implementation schedule should occur as soon as the federal agency can make the transition to the state adopted process, and the A-95 procedures should remain operative until that time, irrespective of the April 30th date.

We believe one inconsistency should be modified which deals with delegated comments. We would desire comments originating from delegated regional or local officials to still be transmitted to the Federal agency through the "single state contact". Doing this would ensure responsiveness and provide for necessary communications coordination.

TELEPHONE: 301-383-7700
TTY for Deaf: 301-383-7566
OFFICE OF SECRETARY

We support a more thorough effort to incorporate other relevant federal consultation requirements with State and local officials through the State adopted process. In this regard, we are confused as to whether EIS requirement will be circulated through the single state contact. We request clarification of this concern in the rules and support the use of the single state contact for this purpose.

The following are specific comments on each section of the proposed Rule:

1. Section 29.2 (definitions): The definition section should include definitions for federal financial assistance, direct federal development and federally required state plans.

2. Section 29.3 (programs and activities): Add language stating the following, "unless specifically prohibited by Federal law, the opportunity for selection of federal programs and activities to be reviewed under the state adopted process shall be left to the discretion of the state and local governments".

3. Section 29.4 (administrative responsibility):
   -(b)(1): The state and local governments support the concept of a single state contact for official communications and federal agencies.

   -(b)(2): For clarification this section should be rewarded as follows, "Communicates with state and local officials as early in a program planning cycle as is reasonably feasible to explain proposed plans and actions and to allow these officials sufficient time to be able to exert meaningful influence on the Agency's course of action".

   -(b)(4): We support efforts for simplification and coordination of plans, but feel this important issue is not sufficiently treated so as to give any meaningful guidance for implementation by the state.

   -(b)(7): We support phasing out of single purpose organizations created for federal purposes.

4. Section 29.5 (procedures)
   -(a) Notice to EPA is inconsistent with instructions from OMB.

   -(b) Transition should be handled differently allowing for continuation of A-95 procedures until agency effectuates implementation of state adopted process.

5. Section 29.6 (comment)

-(a): When the state delegates responsibility for originating comments to a local official, the comments should be transmitted through the single state contact to the federal agency.

-(b): The time constraints are not feasible to conduct a meaningful intergovernmental review. We recommend a 45 day period for financial assistance actions unless a notice of intent was initially used; and 60 day period for interstate and direct federal action unless early notice was provided. When prior consultation through notice of notice of intent or early consultation has been provided, then 30 days should be a sufficient period to formulate an official position on the proposed action. Alternatively, if the basic 30 day period is not extended, the State should have the option to extend this review period by 15 days to resolve any policy disagreements should any arise. The time for review would begin upon receipt of the notification by the single state contact.

-(c)(1): EPA should not accept applications for financial assistance or required plans until prior consultation has been provided through the state adopted process. EPA should advise any applicants of their responsibility to meet state requirements.

-(c)(2): If the applicant submits its request seeking review through the state adopted process, then the comments should be provided by the applicant and attached to the applicant package. This would provide an opportunity for the applicant to respond to any comments prior to submission to the federal agency.

-(d): We support the criteria for comments outlined in the section analysis. However, we would add a statement with regard to consistency with state, local or regional comprehensive plans or policies.

6. Section 29.7 (accommodation)

-(a)(3): All official explanations of non-accommodation should be in written form. Upon receipt in the single point of contact of a non-accommodation letter, a state or local decision could then be made to request the Governor to seek re-consideration by the Administrator of the federal agency, within the ten day period. In the alternate, the Governor's designee should be able to request a written explanation of non-accommodation. In any case, the ten day period should begin when a written response has been received in the single point of contact concerning a non-accommodation. EPA should consider a method for responding to appeals from the Governor for re-consideration. Any re-consideration response to the Governor on a non-accommodated action should be from the agency Administrator. A statement should be added concerning the fact that a record of non-accomodations will be retained by the federal agency for subsequent evaluation.

-(b): The following language should be added to this subsection: The 10 day waiting period "is intended to permit states to respond to the federal agency in case of non-accommodation before EPA has irrevocably carried out the decision". Language should also be added referencing how the federal agency will consider the state response to the federal decision of non-accommodation.

I appreciate your attention to this matter and would welcome an opportunity to review in more detail any of the comments made above.

Very sincerely yours,

Constance Lieder

Constance Lieder
Secretary of State Planning

cc: Governor Hughes

ADVISORY
COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D.C. 20575

March 1, 1983

Senator Dave Durenberger
Chairman
Subcommittee on Intergovernmental
Relations
U.S. Senate
Washington, DC 20510

Dear Senator Durenberger:

Thank you for inviting the Advisory Commission on Intergovernmental Relations to submit a statement for the record of your March 3, 1983 hearing on Executive Order 12372 and the proposed rules that implement the Order.

As you know, the Commission has been concerned with improving the processes for intergovernmental consultation for many years, and did much of the original work leading to OMB Circular A-95 and the two primary laws underlying it. Since A-95 was issued in 1969, the Commission has monitored the experience with it and has recommended improvements from time to time.

Intergovernmental consultation is a key ingredient in the success of the Nation's highly intergovernmentalized federal system. We hope that the present transition to new procedures will respect the principles and requirements enumerated in both Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and in Title IV of the Intergovernmental Cooperation Act of 1968, and that it will maintain a strong intergovernmental consultation system throughout the nation.

The proposals for revising intergovernmental consultation procedures under E. O. 12372 and the proposed supporting federal agency regulations raise a number of issues that need careful examination by all parties in the federal system. It is good to know that your hearing will focus attention on these issues.

Enclosed is a recent ACIR Information Bulletin on this subject that presents a staff analysis of the current proposals in light of existing legislation and accumulated experience with OMB Circular A-95. We would be pleased to have you incorporate this Information Bulletin into the record of the hearing.

Sincerely,

S. Kenneth Howard
Executive Director

Enclosure

Information Bulletin:
Advisory Commission on Intergovernmental Relations
Washington, DC 20575

BULLETIN NO. 82-3 December 1982

INTERGOVERNMENTAL CONSULTATION CHANGES PROVIDE OPPORTUNITIES

Considerations for State and Local Officials in the Transition from OMB Circular A-95 to Executive Order 12372

> All viewpoints -- National, regional State, and local -- shall be fully considered and taken into account. . . .
>
> Title IV, Intergovernmental Cooperation Act of 1968

IN BRIEF

OMB Circular A-95 has been rescinded, effective April 30, 1983. Opportunities for state and local officials to influence federal-aid activities will remain available under Executive Order 12372 -- but there will be no federally-prescribed procedures for implementing those opportunities. Action by state and local officials is essential if they want to shape the intergovernmental consultation process so that it enhances coordinated policy development and implementation.

This Information Bulletin is offered as an aid to state and local officials in interpreting E. O. 12372 and in considering their options for responding to it. This task is important if state and local governments wish to preserve, or hope to enhance, their awareness of and possible influence over a wide array of federal decisions and to coordinate these efforts with their own policy development and implementation processes. Whatever approach state and local officials decide to take, it will be to their advantage to consider this matter before April 30, 1983 when OMB Circular A-95 will cease to be in effect.

they can delay the effect on themselves of the April 30, 1983 deadline imposed by E. O. 12372 by taking official interim action informing OMB that the existing A-95 process will remain in effect in the state until further notice. Final action can be taken by the state, then, in accordance with its own legislative and rulemaking schedules.

What it will take for this transition to succeed is intergovernmental cooperation of a high order within each state. In the case of the 41 interstate metropolitan areas, preserving an areawide approach without specific federal guidance will require extraordinary cooperation among the states.

AN OVERVIEW

OMB Circular A-95 has been a major vehicle in recent years for intergovernmental consultation in the United States. The transition from this circular to E. O. 12372 presents a significant challenge to state and local officials for several reasons. First is the short time available to accomplish it. Additional factors are the relative lack of specific federal guidance, the recent loss of federal funds to support intergovernmental consultation, and the perception that there will be much less federal aid in the future and that much of what will remain will be placed outside the intergovernmental consultation process.

E. O. 12372 offers some significant new opportunities. It emphasizes that:

+ numerous federal requirements for state plans may be met more effectively and efficiently through the new process;

+ many of the federal government's own activities can be subject to effective influence by state and local governments; and

+ states can choose -- if they wish -- to encompass currently excluded types of federal aid like block grants and general revenue sharing -- as well as state and local activities not having federal involvement -- within an overall process or set of interrelated processes for purposes of consultation, policy development and coordination among state, local, and areawide officials.

Whether or not the potential opportunities offered by E. O. 12372 are fulfilled depends very heavily upon state action. States appear to be leaning toward at least four options under the new Executive Order: (1) reforms designed to capture new opportunities, (2) simple maintenance of the present consultation system incorporating both state and areawide clearinghouses, (3) designation of the areawide clearinghouses collectively as the "official state system" without any state clearinghouse, and (4) no action.

The roles specified for local and areawide officials by federal laws that remain in effect are unlikely to be clarified by the expected federal regulations. Instead, state regulations complying with the applicable federal laws that remain in effect are expected to bridge this gap. Local and areawide officials will want to be vigilant as state systems for intergovernmental consultation are developed to make sure that their own roles and perspectives are incorporated. States may call upon their own legal staffs to be sure that any new procedures they develop will satisfy the provisions of applicable federal laws. The new federal regulations will not provide guidance about that.

If states need more time to develop adequate new systems for intergovernmental consultation and to determine how that consultation process might best fit into their own policy development and coordination activities,

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THE NEED FOR TIMELY STATE AND LOCAL CONSIDERATION

The nation's state and local officials could be left without adequate procedures for consulting the federal government's executive branch concerning a wide array of federal-aid projects, federally-required state plans, direct federal development and land management activities, and federal regulatory decisions because of:

1. the elimination of OMB Circular A-95 by Executive Order 12372;

2. the scheduled rescinding of federal agency implementing regulations; and

3. inadequate responses by the states.

E. O. 12372 makes a large number of federal agencies responsible for providing "opportunities for consultation by elected officials of those State and local governments" affected by such activities. 1/ However, the Order also urges the federal agencies to utilize state-developed intergovernmental consultation processes for this purpose. State consultation with local officials is required in designing such state processes, and existing federal laws offering intergovernmental consultation opportunities must be satisfied. 2/

Interpretation of E. O. 12372 leaves a great deal of room for creativity as well as disagreement and uncertainty at the state and local levels of government. OMB clearly intends that federal regulations based upon the Executive Order not prescribe procedural steps for state and local officials to use in their contacts with federal agencies. 3/ The federal regulations, instead, are intended to set forth federal agency responsibilities and procedures for dealing with the comments of state and local officials submitted to them. State and local creativity is expected in the design of consultation mechanisms. However, it is uncertain what will result.

1/ See Sections 1 and 6 of E. O. 12372.

2/ See Section 2 of E. O. 12372.

3/ Harold I. Steinberg, Associate Director for Management, U.S. Office of Management and Budget, Memorandum on "E. O. 12372 -- Federal Implementation Activities: Attached Materials," Washington, DC, October 14, 1982.

Another source of uncertainty is that a list of applicable federal laws has not yet been published by OMB. Even when it is published, federal regulations will not interpret them. OMB explains that "In keeping with the President's federalism principles, federal regulations will provide maximum state flexibility and will be neutral with respect to the design and operation of an official state process." 4/

The withdrawal of A-95 raises many old issues and creates some new ones. Combined with OMB's intent to keep federal regulations minimal, this federal withdrawal may force state and local officials to resolve such issues among themselves. Undoubtedly, they will be resolved differently from state-to-state as officials consider their options. By taking at least interim action before the April deadline, state and local officials can help ensure a relatively smooth transition to whatever intergovernmental consultation process they may envision for the future.

To facilitate consideration of the intergovernmental consultation process and how it might be shaped to suit state and local interests, this Information Bulletin examines (1) OMB intentions for federal regulations under E. O. 12372, (2) some basic requirements of applicable federal laws, and (3) the principal options available to state and local officials for continued or enhanced access to certain types of federal executive branch decisionmaking. Appendices provide copies of E. O. 12372 and OMB Circular A-95 as well as a listing of state-local relations bodies in the states that might be helpful in developing responses to the new Executive Order. A brief history of this type of intergovernmental consultation is also included to give the benefit of past experience to officials dealing with the current transition.

THE NEW FEDERAL APPROACH AND ITS SIGNIFICANCE FOR STATE AND LOCAL GOVERNMENTS

OMB's present intent under E. O. 12372 is to (1) allow state and local officials the greatest legally-permissible discretion in managing their intergovernmental consultation efforts efficiently within tight budget constraints, and (2) enhance the extent to which state and local comments will make a difference in federal decisionmaking. These two intentions offer significant opportunities that state and local officials can grasp. OMB's intention that regulations of the federal agencies under E. O. 12372 not prescribe consultation procedures at the state and local levels mixes a dash of uncertainty with the opportunity.

4/ *Ibid.*, attachment entitled, "Significant Features of Executive Order 12372," p. 2.

Among the issues reopened by the new Executive Order are:

1. Who do the (a) applicants for federal aid projects and (b) federal agencies proposing direct federal action contact to begin intergovernmental consultations?

2. Who should be included in the consultations: Geographic jurisdictions? Functional agencies? Environmental impact evaluators? Civil rights protection agencies? Others?

3. In interstate metropolitan areas, will there be areawide mechanisms for communicating across state lines?

4. Will time limits be imposed upon the consultations? How early will initial notification take place? Will there be an open-ended period for working out differences during the time between the initial notice of intent to file a proposal and the submission of a formal proposal? Indeed, will there be any pre-proposal review period at all?

5. What programs and activities will be covered by the consultation process and can a state decide to limit the programs and activities reviewable by local officials without their agreement?

6. Will the comments of all affected parties continue to be forwarded to the federal funding agency, or merely those of designated clearinghouses (or their successors), or just a single view developed by the state?

7. Will there be a consistent and uniform process at the federal level that the state and local officials can count upon for compliance and response?

Among the additional issues raised by the Executive Order are:

1. How will the Executive Order change the status of existing single-purpose, federally-funded planning organizations -- like separate health planning, aging, mental health, and community services bodies?

2. Which other statutory and nonstatutory intergovernmental consultation processes are to be consolidated with those previously covered under A-95? (OMB has asked each federal agency to inventory all current provisions for such processes and recommend which ones can be merged.)

3. Will there be federal criteria that a state-designated process will have to meet?

4. Will OMB notify the affected federal agencies about the specifics of all features of substituted state processes -- including time frames and covered programs as well as a directory of new state-designated clearinghouses?

5. How will federal regulations change federal agency performance in accommodating state and local reviews?

Forthcoming federal regulations will elaborate very little on E. O. 12372 with respect to procedures for state and local officials to follow, but will remind these officials that they should adhere to applicable federal laws in developing their own regulations. Such regulations will not resolve many of the issues raised above. OMB's intention is that state regulations developed in consultation with local officials under Section 2 of the Executive Order be used to provide the missing answers. OMB, indeed, envisions under E. O. 12372 that the states (in consultation with their local governments) will establish an "official state process" for intergovernmental consultation that will take the place of any federally-specified procedures (such as those that have been in place through OMB Circular A-95). OMB clearly has made this substitution the centerpiece of its present regulation-writing effort.

The opportunities preserved under E. O. 12372 and applicable federal laws, and the responsibility placed upon state and local officials for taking advantage of them, are two sides of the same coin. In other words, "with freedom comes responsibility."

With OMB rescission of Circular A-95 in July 1982 (and elimination of federal agency implementing regulations no later than April 30, 1983), state and local officials working together may initiate and begin using their own intergovernmental consultation process at any time they are ready to do so. Such a process may take many different forms, including:

+ official confirmation on an interim or final basis that the existing A-95 procedures will continue to be followed by the present clearinghouses;

+ interim or final confirmation that the present system will be maintained with specified modifications (such as an amended list of programs covered or an altered list of clearinghouses); or

+ designation of an entirely new intergovernmental consultation process (that may, for example, accommodate and make maximum use of indigenous planning, programming, and budgeting procedures).

One advantage of establishing a newly-designed process is avoiding duplicate reviews of proposed activities. For example, if projects are adequately reviewed and coordinated by all affected parties in the course of regular planning and budgeting processes at the state and local levels, or through federally-required processes like the U.S. Department of Transportation's multiyear transportation improvement program and its related "annual element" for first year funding priorities, an additional review only for the purposes of meeting federal intergovernmental consultation requirements may be unnecessary, duplicative, and wasteful. In such cases, the substitute process could eliminate this extra step by accepting indigenous procedures as meeting federal requirements. In addition, federal requirements for intergovernmental consultation might well be met through the same process that state and local officials have developed for reviewing projects not involving the federal government and for types of federal aid not covered presently by Circular A-95 (such as general revenue sharing and block grants). Thus, state and local officials have an opportunity to provide a single set of procedures covering a much wider scope of activities than the federally-required intergovernmental consultation process. Of course, there also is the countervailing potential for a narrower, more focused approach, depending upon the choices that state and local officials make.

An interim confirmation of the present system -- with or without modifications -- may be used by a state to give it as much time as it may need beyond April 30, 1983 to work with appropriate state and local officials to establish "final" modifications or a newly-designed system. Modifying or substantially redesigning the intergovernmental consultation system within a state is likely to raise some complex issues for negotiation among the Governor, the legislature, state agencies, local governments, and the general public. It may require new state legislation, formal administrative rulemaking procedures, or both. It should be approached carefully, without undue time pressures imposed from outside.

Even after a "final" intergovernmental consultation process is certified to the federal government under the new Executive Order, it may still be further modified or redesigned, as needed from time-to-time, to incorporate new techniques of consultation and to adjust the scope of activities as experience may suggest.

To avoid confusion after April 30, 1983 when most federally-prescribed procedures to be followed by state and local officials will cease to exist it is highly desirable that state and local officials in each state at least consider taking interim action to certify their own process before April 30, 1983. Indications are that a gubernatorial executive order, a letter from the governor incorporating certain legal assurances, an action by the state legislature, or a formal administrative rule will be required by OMB as valid evidence that the state system is "official." In the absence of an official state system, individual areawide clearinghouses still wishing to submit their views to federal agencies will have no federally-recognized procedure to follow under E. O. 12372. Unless other satisfactory channels can be found, this impass could lead to litigation. 5/ Without cooperative action by state and local officials, some of the opportunities for consultation provided under Circular A-95 that are intended to be preserved under E. O. 12372 may be lost or made more difficult to utilize.

INTERGOVERNMENTAL CONSULTATION PROVISIONS OF FEDERAL LAS

As already indicated, E. O. 12372 recognizes the applicability of existing federal laws requiring intergovernmental consultation. However, these laws are not specifically identified. States may have to consult their own legal staffs to determine which laws apply and how they should be interpreted.

The provisions of federal law previously cited in OMB Circular A-95: 6/

- call for consideration of all viewpoints -- national, state, regional, and local (Sec. 401(b), Title IV, ICA of 1968);
- establish national concerns for coordinating development, protecting the environment, providing equal opportunities, and making reasoned choices among conflicting activities (as spelled out in all three acts cited in footnote 2, as well as in Title VI of the Civil Rights Act of 1964);
- urge consistency with state, local, and regional comprehensive plans (Sec. 204(b), DCMDA of 1966; Sec. 401(c), ICA of 1968); and
- set requirements in metropolitan areas for involving politically accountable metropolitan planning agencies in reviewing an enumerated range of federal programs, allowing explicitly for a maximum of 60 days for metropolitan reviews (Sec. 204, DCMDA of 1966).

States should design their intergovernmental consultation procedures to accommodate the provisions of these laws as well as any other relevant ones that may be identified by the states, OMB, and the federal agencies.

5/ Such litigation has been authorized by the Board of Directors of the National Association of Regional Councils upon a determination by the Board or Executive Committee that federal regulations under E. O. 12372 and the follow-up actions required by the states will substantially limit the access of a significant number of regional councils to the intergovernmental consultation process.

6/ Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, Section 102 (2)(C) of the National Environmental Policy Act of 1969, and Federal civil rights legislation. See Appendix D for the text of these provisions.

Such accommodations will help ensure minimal state and federal exposure to litigation under the new processes and will minimize the need for duplicate processes with attendant waste and confusion.

OPTIONS FOR STATES

If the states' intergovernmental consultation processes are sensitive to the needs of local officials and areawide planning organizations, and comply with all applicable federal laws under the Executive Order, they may satisfy the needs of all parties -- federal, state, regional, and local. To the extent that some states do not participate, are not sensitive to the needs of local officials and regional bodies, or do not know the requirements of federal law, many issues will probably remain unresolved and potentially subject to litigation. In addition, opportunities to maximize state influence on federal decisionmaking may be lost.

Capturing Benefits for States

From the states' point of view, influencing federal decisionmaking in a way that reinforces state goals and objectives may be the most important objective of the intergovernmental consultation process. To the extent that states have established clear goals, objectives, plans, programs, and budget priorities, these may be used effectively through the intergovernmental consultation process to help mold federal decisions about the use of federal funds within the boundaries of the state. To the extent that states need to be clearer about these elements of their own policies, Executive Order 12372 can be a useful stimulus.

Ignoring this process for communicating with the executive branch of the federal government places greater reliance on the political process at the national level. A states' direct relationships with its Congressional delegation, its efforts to influence national legislation, and its Governor's direct access to officials in the federal executive branch are in no way being overlooked or downplayed, but only a few major issues reach this level of attention.

A state can benefit from having routine channels of administrative contact that allow the full range of state policies to be brought to bear on the many federal and federally-assisted projects being pursued year-in and year-out. The contacts between individual state departments and agencies and their counterparts at the federal level, while very useful, are not an adequate substitute for the broader types of consultation involving the governor's office, the state legislature, and the indirectly affected state agencies.

Enabling Local Government Participation

The official state process also can ensure that local officials and regional bodies continue to have access to the decisionmaking processes of federal executive departments and agencies on matters of local concern.

In addition, local and regional reviews of projects often may have great significance in formulating state comments. Local officials and regional bodies frequently are closer to and more familiar with the intimate details and apparent implications of proposed federal and federally-assisted activities as well as related state, local and private sector activities. Their insights may significantly supplement and enhance evaluations made at the state level.

Deciding Which Approach the State Will Take

ACIR and the National Association of Regional Councils (NARC) both have conducted informal surveys of states to obtain insights into potential state roles under E. O. 12372. The finding of both surveys is that substantial differences do, and are likely to continue to, exist among the states in their approachs to intergovernmental consultations.

Presently, at least two states no longer have active A-95 clearinghouses at the state level and several others are just "going through the motions" with minimal staff. On the other hand, at least seven states have state legislation or an executive order mandating a project review and comment process whether or not the federal government calls for one. Other states represent gradations between these two extremes.

All the states seem to be aware of the transition from A-95 to E. O. 12372. Some are actively preparing for the transition, but in the 36 states where gubernatorial elections were held in 1982, state efforts along these lines have largely been "put on hold" until after the gubernatorial inaugurations, the reconvening of the legislature, and the disposition of several top priority issues. Realistically then, many states will not be seriously addressing this transition until early 1983 at the earliest -- leaving very little time to act before the April deadline.

Aside from the policy inclinations of new governors and legislatures, there are two major forces working to influence state reactions to E. O. 12372. The first is the reduction in federal financial support for intergovernmental consultation processes. The second is an exaggerated perception in some states that little of importance may still require an official consultation procedure. 7/

These two influences may lead a state to conclude that intergovernmental consultation is not worth funding, at least at the state level. Instead, the state might assume that individual state agencies know all they need to about the federal aid programs that effect them and that coordination by areawide clearinghouses is adequate to represent other views. Under these assumptions, abolishing the state clearinghouse may appear to be a tempting way to cut red tape and save administrative funds.

7/ Over 200 federal-aid programs are still subject to consultation procedures, as are a great number of activities pursued directly by federal agencies.

Tentative thinking in the states about the current transition in intergovernmental consultation processes ranges widely from the creative desire in a few states to improve upon the present system, to the wish among a number of states that the present system be maintained with relatively little modification, to the determination in a few states that they should seriously consider a reduced state role in the process.

The ACIR and NARC surveys suggest that states are likely to choose among four basic approaches in reaction to E. O. 12372. These might be termed (1) aggressive reform, (2) status quo, (3) delegation, and (4) non-participation. Briefly, these might be described as follows:

- The Aggressive Reform Approach. A state taking this approach sees Executive Order 12372 as an opportunity to reduce federal compliance burdens, advance intergovernmental reforms, improve management in state government, and focus the resources of all levels of government upon the attainment of official state and local goals. To accomplish these aims, the state may seek to combine various state and local review processes required by state legislation with the federally-required process. It may seek to substitute regular state planning and budgeting processes for a separate review and comment procedure. It may seek new state legislation, or amendments to existing state legislation, calling for intergovernmental consultations within the state irrespective of federal requirements. It may seek a more discriminating review process that handles projects of statewide and areawide significance differently than those of only local significance. It may seek paperwork reduction and relief from time delays. It may more greatly emphasize review and influence over direct federal activities than over federally-aided projects.

- The Status Quo Approach. A state taking this approach would provide consultation processes at both state and areawide levels, and maintain intergovernmental reviews and comments in the A-95 mold with relatively minor modifications. Such modifications might, for example, reduce the number of areawide clearinghouses by not redesignating subregional ones, and might selectively reduce the number of programs subject to notification and review.

- The Delegated Approach. A state taking this approach would not actively pursue a state role in intergovernmental consultation, but would redesignate the areawide clearinghouses and allow the intergovernmental procedure to go forward at that level in accordance with federal provisions.

- The Non-Participatory Approach. A state taking this approach would not seek involvement in the consultation process itself and would not designate areawide clearinghouses. Individual state agencies, legislators, and local elected officials would have to seek opportunities to review and comment upon proposed federal actions as best they could under federal laws and regulations without guidance from the state legislature or the governor. Areawide planning agencies representing local officials might be recognized -- on their own initiative -- by individual federal agencies to continue their clearinghouse functions.

Each of the first three responses to E. O. 12372 probably would be adequate to define a continuing intergovernmental consultation process in a state, while the fourth would leave many questions unanswered and create a high degree of uncertainty within the state after April 30, 1983.

Making the Process Effective and Legally Adequate

It is easy for a governmental unit at any level of government to "forget" to consult with other affected governmental units about its work. It is easy to find that there is not enough time or money to "indulge in" intergovernmental consultation. It is easy simply to publish a notice of some proposal and call that consultation, rather than spending the time, effort, and money to do a more thorough and effective job. And it is hard to know how and with whom to consult on any particular proposal. A carefully worked out routine process for intergovernmental consultation that is recognized to be fair and timely eliminates this forgetfulness, forecloses weak substitutes for real consultation, and reduces quandries over how to proceed. Arguments about procedure also are eliminated, so that communications among governments can focus upon the substance of the policy issues at hand.

An adequate process established by a state would be simple and efficient, would provide an opportunity for expression of viewpoints by the affected parties, would provide a means of marshaling all relevant state policies for consideration by federal, state, and local decisionmakers, would satisfy applicable federal laws, and would be adequately funded. Each of these features that might be incorporated into a state process deserves some elaboration.

Simple and Efficient Procedures. The key to cost savings and to reducing burdens in a consultation process is keeping the process relatively simple, routine, and unencumbered by exceptions and special provisions. Such a process can be easily understood and responded to by the affected parties. Written descriptions of the process (rules, regulations, and handbooks) would be kept short and simple. Administrative guidance about who to notify would not be drawn so tightly that an unexpected request for notification on a particular project is likely to spawn a major legal crisis.

Opportunities for All Viewpoints. Responsibilities of designated clearinghouses (whether provided at both the state and areawide levels, or only at one level) could clearly call for notification of the affected parties at all levels of government. When a significant issue arises in the review of a federal or federally-assisted activity -- or of a strictly state or local project -- one approach might be to get all involved parties to the bargaining table to reach a mutually satisfactory accommodation.

State Policy Focus. The most tangible benefit for state government in the intergovernmental consultation process is the chance to apply official state policies to decisionmaking about specific projects. The more clearly and persuasively state policies can be marshaled with respect to such projects, the greater their influence is likely to be on federal decisionmaking. If established state policies relevant to such projects do not exist, state influence is likely to be impaired. In such cases, the review process could be substantially strengthened by additional policy development activities within the state. Some such activities might also benefit considerably from participation by local officials and regional policy bodies.

Adequate Funding. Federal aid traditionally has provided the basic financial support for the A-95 process. With decreasing federal domestic aid, this planning assistance has been hard hit. The main program, HUD's Section 701 Comprehensive Planning Assistance Program which funded both the state and areawide levels, has been totally eliminated, and many of the other more specialized planning aids have been either eliminated or substantially reduced in amount. Other resources to support intergovernmental consultation activities now must be located if the intergovernmental dialogue is to continue in an effective form.

All levels of government are now facing difficult budget itmes, but states are in stronger financial positions than either local governments or areawide bodies to underwrite comprehensive policy development and intergovernmental consultation activities. Local government taxing sources increasingly have been capped, while areawide bodies almost universially have no taxing authority of their own that can be used to replace lost federal funds. States generally have greater authority to raise revenues and can tap a much wider range of federal aids -- through indirect cost recoveries -- to support administrative activities like intergovernmental consultation. Nevertheless, local governments as well as states receive many of the benefits of policy and project coordination, and they might be expected to share the costs of this process.

A Checklist for State Officials

To sum up this critical state role, the following checklist is offered:

1. Does the state have clear policy goals and objectives enunciated by the governor or the legislature that establish broad policies and strategies spanning narrow programmatic and organizational lines within state government? If not, is the state likely to have such goals and objectives in the foreseeable future? Is there a desire to have these broad goals and objectives reflected in federal decisionmaking affecting the state? Is there any central policy development or planning unit in state government charged with responsibility for following up such goals and objectives that might perform the consultation functions?

Can the information generated by the consultation process be linked usefully and readily to other existing policy development processes such as budgeting?

2. Do local officials and areawide organizations in the state desire to continue their participation in the intergovernmental consultation process?

3. Which approach to intergovernmental consultation will the state take -- aggressive reform, status quo, delegated, or non-participatory?

4. Will the state's approach provide adequate tracking of federal financial aid and direct federal expenditures in the state?

5. How great a change will the state's chosen approach make in current procedures, and what type of action might be required to make this change? Will the chosen approach require new or amended state legislation, a new executive order, formal state rulemaking, or some other official action?

6. How long will it take to accomplish the desired changes in procedure? Can these changes be accomplished by April 30, 1983? If not, can interim action be taken by this date to maintain the existing A-95 process until such time as the desired state system can be put in place?

7. Finally, is the process itself simple, efficient, and adequately funded, and does it: (a) provide a good vehicle for promoting state goals and objectives in federal decisionmaking; (b) provide equal opportunities for all viewpoints to be expressed -- including those of metropolitan planning agencies and areawide policy bodies in interstate regions; (c) provide an equitable and timely mechanism for negotiation and conflict resolution among affected parties with different viewpoints; and (d) satisfy applicable federal laws?

OPTIONS FOR LOCAL OFFICIALS AND AREAWIDE ORGANIZATIONS

Many issues concerning the impact of federal and federally-assisted activities surface only when evaluation takes place at the local level where state, local and private sector activities are viewed simultaneously. Consultations involving local officials, then, are essential to a smoothly working, effective, and efficient process. In light of this local role, local officials and the areawide organizations that give both form and substance to much of the consultation process need to be consulted and given the opportunity to help determine their state's approach under E. O. 12372. In non-participating states, local officials and areawide organizations may wish to persevere on their own to preserve consultation opportunities. These considerations are elaborated upon below.

Realizing Benefits "In the Trenches"

The principle of "compatibility with local and areawide plans" is set forth in law to guide federal decisionmaking about proposals affecting community development. Such plans are best interpreted by local and areawide officials themselves, as they view particular proposals for federal or federally-assisted activities. In addition to the relationship of specific proposals to local and areawide plans, many project specifics become apparent only at this stage. Thus, the "nitty gritty" effects of proposed activities often are viewed first by those participating in the intergovernmental consultation process. Such details frequently are of significance only to those local governments and constituencies most directly and most intimately affected. In many cases, then, the local level adds a unique dimension to the consultations.

Helping to Determine the State's Approach

As noted earlier, local governments and areawide organizations are to be consulted by a state as it determines what approach to take to intergovernmental consultation and as it develops the specifics of the consultation process under E. O. 12372. This involvement of local and areawide officials in designing the new system can be expected to yield constructive suggestions for improved effectiveness and efficiency, increased local commitment to the new process, and philosophical compatibility with it. Many areawide clearinghouses have been in business many years and have been deeply and substantively involved in policy development, review, and comment activities. New state systems might benefit from this experience and make use of the existing organizational capacity to serve local interests and facilitate intergovernmental communications.

Persevering in Non-Participating States

In those states that opt not to take any action under E. O. 12372 (as at least two appear likely to do), the full burden for preserving the intergovernmental consultation process falls upon local and areawide officials. OMB has suggested that it will be up to each individual federal agency to decide whether to accept comments from state and local officials in such circumstances and, if so, how to treat such comments. Clearly, the laws underpinning federal requirements for intergovernmental consultation contemplate that the federal government will provide opportunities for local and areawide viewpoints to be heard. In metropolitan areas, certain specific organizations are to be notified of particular types of programs and given a definite period of up to 60 days in which to respond (Sec. 204, Demonstration Cities and Metropolitan Development Act of 1966). Thus, there is a legislative basis for local and areawide officials to insist that the federal government provide them with opportunities to be heard regardless of their state's stance.

Making the Process Effective

The effectiveness of local and areawide advice to state and federal officials depends largely upon the quality of local and areawide policies and plans and the extent of political commitment to them. If such policies and plans are reasonably comprehensive, soundly based upon fact, and widely accepted as the basis for local and areawide action, state and federal officials can safely rely upon advice that reflects them. A strong track record of planning and policy continuity and effectiveness within an area is needed to build federal agency confidence in the intergovernmental consultation process. Such confidence is essential if local and areawide policies are to influence federal decisionmaking. If this confidence does not exist already, developing it is an important goal to be considered.

Keeping Costs Reasonable

An efficient intergovernmental consultation process will provide notice about the wide range of federal and federally-assisted activities having a potential influence upon the development of communities and areas, but will provide inexpensive and rapid means for reviewing and commenting on them. Means should be provided for screening proposed activities into at least the three following categories: (1) non-significant; (2) significant but consistent with prior planning and programming; and (3) significant but inconsistent.

If the policies and plans of the local government or areawide organization on whose behalf a reviewer is working have been compiled and are up-to-date, rapid staff review could probably yield this initial classification with relatively little effort. "Non-significant" proposals can be given a quick "no comment" response, and "significant but consistent" proposals a routine favorable comment. Only those proposals that appear "significant but inconsistent" would have to be evaluated in depth and scheduled for detailed consideration by elected officials. Ongoing intergovernmental planning and programming processes within the areawide jurisdiction could be expected, over time, to increase the number of proposals falling into the "significant but consistent" category, thereby minimizing the number that need full treatment.

Hopefully the processing time for the average proposal in the intergovernmental consultation process can be reduced to well below the maximum 60 day period allowed under Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966. Time is money; an efficient system can contribute significantly to keeping costs reasonable.

A Checklist for Local and Areawide Officials

To summarize the issues facing local and areawide officials in the transition to E. O. 12372, the following list of questions is offered:

1. Is there a consensus among local officials about their desire to participate in an established intergovernmental consultation process? If so, what sort of process do they want and how broad should be its scope? What role should the areawide clearinghouse perform?

2. How and when will the state consult with local and areawide officials about the new system for intergovernmental consultation under E. O. 12372? Will local and areawide views be given significant weight in developing the new system? What will be the relative roles of the legislature, governor, and state agencies in developing the new system? Will a formal state rulemaking procedure be followed? If so, what access will local and areawide officials have to it?

3. If the state decides to neither preserve nor improve upon the present two-level intergovernmental consultation process, will the state be willing to certify local and areawide processes to OMB?

4. Will the state take interim action prior to April 30, 1983 to preserve intergovernmental consultation opportunities in the state if it is unable to take final action by that time?

5. What actions can local and areawide officials take to improve the quality and clarity of their own governments' policy bases for use in the intergovernmental consultation process?

6. What means are local elected officials willing to use to streamline proposal reviews during the intergovernmental consultation process?

7. Can local and areawide officials have greater influence in developing state policies on intergovernmental consultation by working together through such organizations as a state league of municipalities, state association of counties, and state association of regional councils? Does the state have an official or semiofficial intergovernmental council or state-local relations body that might be helpful in developing state policy under E. O. 12372? [8]

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[8] See Appendix B for a listing of some major bodies of this type and reference to ACIR's recent study of them.

CONCLUSION

Historically, the federal government has provided opportunities for state and local officials to consult with the federal executive branch about an increasingly broad range of federal-aid plans and projects as well as many direct federal activities affecting the development of communities and states. The specific federally-prescribed procedures for accomplishing this consultation are being withdrawn now, but the federal laws upon which they are based remain in effect.

The federal government intends to maintain, and even expand, opportunities for intergovernmental consultation. However, prescriptive federal regulations will not be provided for this purpose. Instead, procedures developed by state and local officials and areawide organizations will be relied upon.

States have the opportunity to: (1) develop and implement their strategic planning objectives; (2) affect direct federal development and federal regulatory activities within their borders; (3) simplify the federally-required "state plan" process; (4) focus local, state, and federal expenditure plans into a single coordinated effort; and, (5) strengthen state-local relations. Local officials and areawide organizations have opportunities to influence the design of the intergovernmental consultation process in their state and to participate effectively in it. Both the state and sub-state levels have a chance to improve the cost-effectiveness of their consultation activities. Realizing these potentials will require creative initiative by all parties and concerted efforts to practice intergovernmental cooperation.

Whether these potentials are realized is largely a matter of choice for state and local officials. They have an array of options before them along with the ambiguities of minimal specific guidance from the federal government.

ACKNOWLEDGEMENTS

This Information Bulletin was prepared by Bruce D. McDowell, Senior Analyst. Dr. McDowell prepared the 1964 ACIR study that helped prepare the way for enactment of Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968. That study, entitled The Impact of Federal Urban Development Programs on Local Government Organization and Planning, contained draft legislation virtually identical to Title IV. Dr. McDowell later was in charge of the A-95 clearinghouse process in Metropolitan Washington, DC for approximately two years. More recently he has contributed very substantially to the Commission's ongoing research on both metropolitan and nonmetropolitan regions and the A-95 process itself.

In preparing this Information Bulletin, Dr. McDowell has consulted with and gained valuable insights from many knowledgeable people, including: Wayne F. Anderson, Secretary of Administration and Finance, Commonwealth of Virginia (former Executive Director, ACIR); Prof. Dale Bertsch, Ohio State University (former Executive Director, Miami Valley Regional Planning Commission, Dayton, Ohio); John Bosley, General Counsel, National Association of Regional Councils; William G. Colman, Governmental Affairs Consultant, (former Executive Director, ACIR); Jerry A. Coursey, Director of Finance, Atlanta Regional Commission; Prof. Irving Hand, Pennsylvania State Univeristy (former Director of Planning for the State of Pennsylvania); George Marcou, Deputy Executive Director, American Planning Association, Washington Office; Hugh Mields, Governmental Affairs and Planning Consultant (former Deputy Executive Director, U.S. Conference of Mayors); Paul Posner, U.S. General Accounting Office; Frank So, Deputy Executive Director, American Planning Association, Chicago Office; Gloria Whitman and Bertram Wakeley, The Council of State Planning Agencies, Washington, DC.

These and others reviewed the draft Bulletin and supplied many suggestions that have been incorporated in this publication. Nevertheless, final responsibility for this presentation rests with Dr. McDowell.

This Bulletin is a product of the staff of the Advisory Commission on Intergovernmental Relations. It has not been considered by the Commission and should not be considered in any way as an official statement of policy by the Commission.

S. Kenneth Howard
Executive Director

APPENDIX A

Intergovernmental Review of Federal Programs

Executive Order 12372. July 14, 1982

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A–95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

Ronald Reagan

The White House,
July 14, 1982.

[Filed with the Office of the Federal Register, 3:18 p.m., July 14, 1982]

APPENDIX B

State Intergovernmental Advisory Organizations: 1982*

Florida Advisory Council on Intergovernmental Relations
Georgia Commission on State Growth Policy (Effective January 1983)
Illinois Commission on Intergovernmental Cooperation
Iowa Advisory Commission on Intergovernmental Relations
Maine Governor's Municipal Advisory Council
Maryland Commission on Intergovernmental Cooperation
Massachusetts Advisory Commission on Local Governments
Michigan Council on Intergovernmental Relations
Nebraska Advisory Commission on Intergovernmental Relations
New Jersey County and Municipal Government Study Commission
New York Commission on State-Local Relations
North Carolina Local Government Advocacy Council
North Dakota State and Local Affairs Council
Pennsylvania Intergovernmental Council
South Carolina Advisory Commission on Intergovernmental Relations
South Dakota Local Government Study Commission
Tennessee Advisory Commission on Intergovernmental Relations
Texas Advisory Commission on Intergovernmental Relations
Virginia Local Government Advisory Council
Washington State Advisory Commission on Intergovernmental Relations

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* Most states have a Commission on Intergovernmental Cooperation associated with the legislature and many also have some sort of advisory board attached to the Department of Community Affairs. In addition, most have temporary local government study commissions from time-to-time.

SOURCE: ACIR, State-Local Relations Bodies: State ACIRs and Other Approaches (Washington, DC: U.S. Government Printing Office, March 1981), as updated by staff in 1982.

APPENDIX C

HISTORY AND MAJOR FEATURES OF THE INTERGOVERNMENTAL CONSULTATION PROCESS

The intergovernmental consultation process through which state and local officials have been notified of a wide variety of proposed activities to be funded with federal aid or to be pursued directly by federal agencies has developed gradually over the past two decades. As a result of this evolution, the process has come to include a number of routine features and practices. An understanding of this history and the major features that have evolved may provide some insights for officials currently considering the future of intergovernmental consultation. It is in this spirit that the following material is presented.

Opportunities Offered Historically

For many years, some individual federal-aid programs have required consultation with affected parties before specific projects could be funded. In 1966, Section 204 of the Demonstration Cities and Metropolitan Development Act broadened such requirements to encompass all existing and future federal grant and loan programs in metropolitan areas aiding a specific list of program functions. The metropolitan development functions included were: airports, highways, other transportation, hospitals, libraries, housing, open space, water supply, sewage and waste treatment, and law enforcement. This law also requires that projects to be funded under such programs be submitted for review to an areawide agency performing metropolitan planning in the area where the project will be carried out. Congress added that, to the greatest extent possible, this metropolitan planning agency should be composed of elected officials representing the counties and municipalities in the area. The law gives the metropolitan planning agency sixty (60) days to complete the review process.

The Intergovernmental Cooperation Act of 1968 broadened and strengthened this consultation process. It expanded the scope of federal aid programs covered. It also added activities undertaken by the federal government itself -- such as the acquisition, administration, and disposal of federal lands and facilities, and federal regulation of activities affecting development. And it opened the consultation process to all affected levels of government -- including states, nonmetropolitan localities and reigons, and federal agencies in addition to metropolitan planning organizations and local officials.

OMB Circular A-95 was issued in 1969 to establish a uniform process by which the consultations under both these acts could take place conveniently. To the metropolitan review agencies were added (1) nonmetropolitan areawide 1/ organizations to facilitate reviews by local officials in regions of small communities and rural areas, and (2) state agencies to facilitate reviews by state officials and to facilitate consultations with local officials in nonmetropolitan areas not equipped with areawide organizations. These 600 designated areawide and state review agencies are termed A-95 clearinghouses.

Clearinghouse responsibilities have included (1) receiving information about projects, plans, and proposals to be reviewed, (2) notifying affected parties at the level of government where the clearinghouse operates, (3) collecting comments from notified parties, (4) making their own reviews of the proposed projects, plans, and activities, (5) transmitting all comments to the applicant and/or federal agency responsible for acting on the reviewed proposal, and (6) being notified of the subsequent federal decision and the reasons for any federal actions contrary to advice from the state and local officials. Deadlines -- within the 60 days provided by law -- were included in the review process to encourage early consultation and negotiation of differences, and to avoid interminable delays.

Since OMB Circular A-95 was first issued, it has been amended to:

+ increase the covered number of federal aid programs from less than 100 to over 300;

+ designate the A-95 process as a means of obtaining the views of appropriate state and local officials about draft environmental impact statements under Section 102 (2)(c) of the National Environmental Policy Act; and

+ designate the process as a means of affirmatively soliciting the views of state and local officials charged with enforcing civil rights laws to assist federal agencies in guarding against discrimination in the administration of federal aid -- as required by federal Civil Rights Acts.

1/ The term "areawide" is used here and in OMB Circular A-95 to refer to a region -- usually multi-county in geographic extent -- used for planning interlocal policies and, in some cases, for providing services to the whole area where common public issues arise. In metropolitan areas, "areawide" means encompassing the whole urbanized area, at a minimum, plus usually some surrounding hinterland where urban influence and growth potential are important. In nonmetropolitan regions, the organizing principle often is not as obvious. It may have to do with common economic markets, long range commuting patterns, natural resource "basins," administrative convenience, and other factors -- frequently in combination.

Past evaluations of A-95 have found the review and comment process to be constructive and worthwhile, but below par in reaching its full potential. 1/ The four prime difficulties have been that it has . . .

+ generated too much paperwork;

+ cost too much;

+ been funded inadequately in light of all that has been expected; and

+ not had enough effect on federal agency decisions.

Some A-95 clearinghouses have been so discouraged by these problems that they retreated to a largely perfunctory performance of their notification duties -- adding no substantive analysis of their own and caring little whether others do either. This reaction has been especially noticeable at the state level where at least two statewide clearinghouses have ceased functioning altogether and several others are barely alive.

In response to the excessive amounts of paperwork and cost revealed by past evaluations, it was proposed that (1) the review process be more selective and that fast-track reviews be provided for projects already included within approved plans, budgets and programming decisions; (2) certain projects of minor significance be sent through the notification process "for information only," with no review and comment contemplated; and (3) other projects -- below a certain threshold of size or in programs with little or no interjurisdictional significance -- might be totally exempted from A-95. 2/ The "information only" and "threshold" concepts might be particularly applicable at the state level.

These proposals represented variations in emphasis rather than major departures from A-95. OMB always had decided which programs would and would not be subject to the Circular and the clearinghouses and the state and local officials being notified decided for each project whether or not to provide a "comment." In addition, many reviewers have learned to target their efforts effectively to the most significant projects.

Proposals to restrict the number of projects subject to notification were quite controversial. It is one thing to decide not to comment on a

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1/ The best known and most thorough evaluation is: U.S. Office of Management and Budget, Office of Management and Budget Circular No. A-95: An Assessment, Washington, DC, offset, May 15, 1978.

2/ U.S. Office of Management and Budget, Conceptual Outline of Proposed Revisions to OMB Circular A-95, Washington, DC, offset, August 1980.

project about which notification is received, and quite another never to have been notified about the project. In the first case, the reviewer makes his or her own decision; in the second case, someone else has made that decision.

Circular A-95 was not modified to meet any of these criticisms. Yet, other events have decreased the paperwork and costs involved in operating the clearinghouses. The combination of terminating over 60 federal aid programs, merging 77 others into nine block grants, and exempting these new block grants from A-95 in Fiscal Years 1981 and 1982 reduced the total number of programs subject to A-95 (Parts I and III combined) by approximately 30 percent. In addition, most remaining programs received fewer dollars -- in many cases leading to fewer projects for review. If federal aid reforms continue in these directions, the intergovernmental consultation workload will probably be lightened further. A greater proportion of consultations in the future probably will be focused upon the federal government's own direct activities.

As to funding of clearinghouse activities, the federal share dramatically decreased in 1981-82. This reduction puts considerable pressure on clearinghouses to find new sources of funding.

Finally, on the issue of the effectiveness of state and local comments, Executive Order 12372 clearly states President Reagan's wish that federal agencies make every effort to "accommodate" the views expressed by state and local officials. This position reinforces provisions of federal law most clearly stated in Section 401 (c) of the Intergovernmental Cooperation Act of 1968.

Major Features of the Consultation Process

The intergovernmental consultation process has sought to involve all significantly affected public interests and provide benefits to all levels of government. The benefits are in the form of shared information, mutual support among governments taking coordinated actions, and the resolution of conflicts among governments. The key mechanisms are notification of proposed actions and opportunities to exchange views about the proposals. Convenient routines have been developed to ensure that both state agencies (including legislatures in some states) and local governments are systematically provided with opportunities to participate in reviewing proposals for federally-aided and federally-pursued activities. These routines have evolved to meet new needs as they have emerged, and are likely to continue evolving. Major features of the intergovernmental consultation process are detailed briefly below.

Consultation Seeks Mutual Support and Conflict Resolution

Originally, Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and the Intergovernmental Cooperation Act of 1968 were sold to Congress on the basis of horror stories like the one from Florida in which a single site in the Everglades was in late stages of being planned simultaneously for a federally aided airport, a new section of interstate highway, and a natural resources conservation area. At that time, dozens of federal aid programs were being administered by thousands of state and local units and an array of federal agencies. In addition hundreds of diverse federal activities were being administered by this same large array of federal agencies. The federal government, nevertheless, had no means of coordination that might help to avoid such conflicts.

In response to this situation, the federal government encouraged the creation of metropolitan planning agencies in areas where none previously existed and began supporting both established and new ones financially so that they could help fill this gap. Later, as metropolitan coordination began to take hold, nonmetropolitan areawide clearinghouses and state clearinghouses were added to the system to help facilitate coordination of federally-aided and direct federal activities nationwide. State, regional, and local comprehensive planning was specified in the act -- along with national objectives and the viewpoints of state and local officials -- as a prime factor to be considered in coordinating these federal and federally-supported activities and in making reasoned choices among conflicting projects.

Consultation Provides Benefits to All Levels of Government

The intergovernmental consultation process also affords the opportunity to marshal such activities systematically toward the objective of implementing state and local policies. To this end, the Intergovernmental Cooperation Act requires that "to the maximum extent possible, consistent with national objectives, all Federal aid for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning." The act further mandates that "all viewpoints -- national, regional, State, and local -- shall, to the extent possible, be fully considered and taken into account in planning federal or federally-assisted development programs and projects." Clearly, then, Congress intends that intergovernmental consultation be used to enhance simultaneous achievement of the goals and objectives of all levels of government.

Convenient and Systematic Consultation Procedures Have Been Established

OMB Circular A-95 established a single, well known set of routine procedures to help ensure early notification of affected governments concerning federal and federally-assisted projects affecting them, and to elicit a helpful exchange of views among governments before federal funding decisions are made. This process also provides that information about the final federal decision shall be disseminated to affected state and local units. Time limits are established for each phase of the process to avoid interminable delays.

The Process Works Through Involvement and Mutual Understanding

The review process is voluntary, and any comments produced are advisory. No state or local government, or state or areawide clearinghouse, is required to review any particular project or to comment upon it. Likewise, there is no absolute requirement that state and local viewpoints bind federal agencies. But there have been substantial benefits from the process. For example, when notifications about proposals have been early, negotiations among governments frequently have been pursued sincerely and capably, and creative efforts have been made to understand and accommodate the goals and objectives of each level of government involved. As a result, a sound working relationship has developed over a period of years in many cases, based upon growing mutual respect and understanding among officials of the various levels of government. This evolution has produced results beneficial to all.

The Process Has Two Levels of Operation

As developed to this point, the intergovernmental consultation process operates at two levels. First, areawide clearinghouses have responsibilities for notifying local governments of proposed projects, reviewing those projects themselves, collecting comments from local governments, and transmitting all comments to federal agencies, to applicants for federal aid, or to both. State clearinghouses have the same responsibilities with respect to state agencies and the pursuit of state policy objectives.

ACIR has recommended that a third level of operation be established by designating the Federal Regional Councils as federal interagency consultation clearinghouses. 1/ Although this formal step seems unlikely at present, the Intergovernmental Cooperation Act does require that "each Federal department and agency administering a development assistance program shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs." 2/ Presently, this interagency consultation is done on an *ad hoc* basis; there is no routine procedure to assure that it be pursued systematically.

1/ ACIR, *Improving Federal Grants Management*, Report A-53, Washington, DC, U.S. Government Printing Office, February 1977, pp. 282-284.

2/ Section 401(d).

APPENDIX D

OFFICE OF MANAGEMENT AND BUDGET

(Circular No. A-95 Revised)

EVALUATION, REVIEW, AND COORDINATION OF FEDERAL AND FEDERALLY ASSISTED PROGRAMS AND PROJECTS

JANUARY 2, 1976.

1. *Purpose*. This Circular furnishes guidance to Federal agencies for cooperation with State and local governments in the evaluation, review, and coordination of Federal and federally assisted programs and projects. The Circular promulgates regulations (Attachment A) which provide, in part, for:

a. Encouraging the establishment of a project notification and review system to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs in furtherance of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968 (Attachment B).

b. Coordination of direct Federal development programs and projects with State, areawide, and local planning and programs pursuant to Title IV of the Intergovernmental Cooperation Act of 1968.

c. Securing the comments and views of State and local agencies which are authorized to develop and enforce environmental standards on certain Federal or federally assisted projects affecting the environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Attachment (C)) and regulations of the Council on Environmental Quality.

d. Furthering the objectives of Title VI of the Civil Rights Act of 1964.

This Circular supersedes Circular No. A-95 (Revised), dated November 13, 1973 (Part II, FEDERAL REGISTER, Vol. 38, No. 228, pp. 32874–32881, November 28, 1973). It will become effective February 27, 1976.

2. *Basis*. This Circular has been prepared pursuant to:

a. Section 401(a) of the Intergovernmental Cooperation Act of 1968 which provides, in part, that:

"The President shall * * * establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development * * *"

and the President's Memorandum of November 8, 1968, to the Director of the Bureau of the Budget ("FEDERAL REGISTER, Vol. 33, No. 221, November 13, 1968) which provides:

"By virtue of the authority vested in me by section 301 of title 3 of the United States Code and section 401(a) of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577), I hereby delegate to you the authority vested in the President to establish the rules and regulations provided for in that section governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives.

"In addition, I expect the Bureau of the Budget to generally coordinate the actions of the departments and agencies in exercising the new authorizations provided by the Intergovernmental Cooperation Act, with the objective of consistent and uniform action by the Federal Government."

b. Title IV, section 403, of the Intergovernmental Cooperation Act of 1968 which provides that:

"The Bureau of the Budget or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this Title."

c. Section 204(c) of the Demonstration Cities and Metropolitan Development Act of 1966 which provides that:

"The Bureau of the Budget, or such other agency as may be designated by the President, shall prescribe such rules and regulations as are deemed appropriate for the effective administration of this section," and

d. Reorganization Plan No. 2 of 1970 and Executive Order No. 11541 of July 1, 1970, which vest all functions of the Bureau of the Budget or the Director of the Bureau of the Budget in the Director of the Office of Management and Budget.

3. *Coverage*. The regulations promulgated by this Circular (Attachment A) will have applicability:

a. Under Part I, to all projects and activities (or significant substantive changes thereto) for which Federal assistance is being sought under the programs listed in Attachment D or Appendix I of the *Catalog of Federal Domestic Assistance* whichever bears the later date. Limitations and provisions for exceptions are noted therein or under paragraph 8 of Part I.

b. Under Part II, to all direct Federal development activities, including the acquisition, use, and disposal of Federal real property; in addition, agencies responsible for granting licenses and permits for developments or activities significantly affecting area and community development or the physical environment are strongly urged to consult with clearinghouses on applications for such licenses or permits.

c. Under Part III, to all Federal programs as listed in Appendix II of the *Catalog of Federal Domestic Assistance*, requiring, by statute or administrative regulation, a State plan as a condition of assistance.

d. Under Part IV, to all Federal programs providing assistance to State, areawide, or local agencies or organizations for multijurisdictional or areawide planning.

4. *"A-95: What It Is—How It Works."* A fuller discussion of the background, purposes, and objectives of the Circular and of the requirements promulgated thereunder may be found in the brochure, "A-95: What It Is—How It Works," obtainable from the Office of Management and Budget or from Federal Regional Councils.

5. *"A-95 Administrative Notes."* From time to time OMB will issue "A-95 Administrative Notes" providing interim determinations or interpretations on matters of national scope relating to administration of the Circular.

6. *Federal Regional Councils*. Federal Regional Councils are responsible for coordinating the implementation of the requirements of this Circular at the Federal regional level. The Office of Management and Budget is responsible for policy oversight of the Circular and liaison with departmental and agency liaison officers on matters of national scale related to the requirements of the Circular.

7. *Federal agency implementing procedures and regulations*. Agencies will develop interim procedures and regulations implementing the requirements of this Circular revision which will become effective on February 27, 1976. The interim procedures and regulations will be published in the FEDERAL REGISTER no later than February 27, 1976. Agencies will promulgate final implementing procedures and regulations no later than April 29, 1976. OMB will assist and cooperate with agencies in developing such procedures and regulations.

8. *Inquiries*. Inquiries concerning this Circular may be addressed to the Regional A-95 Coordinator for the appropriate Federal Regional Council or to the Office of Management and Budget, Washington, D.C. 20503, telephone (202)-395-3031.

JAMES T. LYNN,
Director.

ATTACHMENT A—CIRCULAR No. A-95 REVISED

Regulations Under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and Section 102(2)(C) of the National Environmental Policy Act of 1969

PART I: PROJECT NOTIFICATION AND REVIEW SYSTEM

1. *Purpose*. The purpose of this Part is to:

a. Further the policies and directives of Title IV of the Intergovernmental Cooperation Act of 1968 by encouraging the establishment of a network of State and areawide planning and development clearinghouses which will aid in the coordination of Federal or federally assisted projects and programs with State, areawide, and local planning for orderly growth and development.

b. Implement the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 for metropolitan areas within that network.

c. Implement, in part, requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, which require that State, areawide, and local agencies which are authorized to develop and enforce environmental standards be given an opportunity to comment on the environmental impact of Federal or federally assisted projects.

d. Provide public agencies charged with enforcing or furthering the objectives of State and local civil rights laws with opportunity to participate in the review process established under this Part.

e. Encourage, by means of early contact between applicants for Federal assistance and State and local governments and agencies, an expeditious process of intergovernmental coordination and review of proposed projects.

2. *Notification of intent.*

a. Any agency of State or local government or any organization or individual undertaking to apply for assistance to a project or major substantive modification thereto under a Federal program covered by this Part will be required to notify both the State and areawide planning and development clearinghouse in the jurisdiction of which the project is to be located of its intent to apply for assistance at such time as it determines it will develop an application.

In the case of applications for projects involving land or water use and development or construction in the National Capital Region (as defined in section 1(b) of the National Capital Planning Act of 1952, as amended) a copy of the notification will be sent to the National Capital Planning Commission (NCPC) in addition to the areawide clearinghouse and the appropriate State clearinghouse. NCPC is the official planning agency for the Federal Government in the National Capital Region.

In the case of an application in any State for an activity that is Statewide or broader in nature (such as for various types of research) and does not affect nor have specific applicability to areawide or local planning and programs, the notification need be sent only to the State clearinghouse. Involvement of areawide clearinghouses in the review in such cases will be at the initiative of the State clearinghouse.

Notifications will include a summary description of the project for which assistance will be sought. The summary description will contain the following information, as appropriate and to the extent available:

(1) Identity of the applicant agency, organization, or individual.

(2) The geographic location of the project to be assisted. A map should be provided, if appropriate.

(3) A brief description of the proposed project to be assisted. A map should be scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that might be affected by the proposed project.

(4) A statement as to whether or not the applicant has been advised by the funding agency from which assistance is being sought that he will be required to submit environmental impact information in connection with the proposed project.

(5) The Federal program title and number and agency under which assistance will be sought as indicated in Attachment D or the latest *Catalog of Federal Domestic Assistance*. (The *Catalog* is issued annually in the spring and is updated during the year.) In the case of programs not listed therein, programs will be identified by Public Law number or U.S. Code citation.

(6) The estimated date the applicant expects to formally file an application.

Many clearinghouses have developed notification forms and instructions. Applicants are urged to contact their clearinghouses for such information in order to expedite clearinghouse review.

b. In order to assure maximum time for effective coordination and so as not to delay the timely submission of the completed application to the funding agency, notifications containing the preliminary information indicated above should be sent at the earliest feasible time.

c. Applications from federally recognized Indian tribes are not subject to the requirements of this Part. However, Indian tribes may voluntarily participate in the Project Notification and Review System and are encouraged to do so. Federal agencies will notify the appropriate State and areawide clearinghouses of any applications from federally recognized Indian tribes upon their receipt. Where a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, and entities, Federal agencies will, upon request of such Tribal Government transmitted through the Office of Management and Budget, require that applications for assistance under programs covered by this Part from such Tribal departments, divisions, enterprises, and entities be subject to review by such Tribal coordinating mechanism as though it were a State or areawide clearinghouse.

3. *Clearinghouse functions.* Clearinghouse functions include:

a. Evaluating the significance of proposed Federal or federally assisted projects to State, areawide, or local plans and programs.

b. Receiving and disseminating project notifications to appropriate State and multistate agencies in the case of the State clearinghouse and to appropriate local governments and agencies and regional organizations in the case of areawide clearinghouses; and providing liaison, as may be necessary, between such agencies or bodies and the applicant. In the case of units of general local government, notifications of all projects affecting his jurisdiction will, if requested, be sent to the chief executive of such unit by the areawide clearinghouse or to such central agency as he may designate for review and reference to appropriate agencies of such unit.

c. In the case of projects under programs covered by this Part located in the coastal zone, as defined in the Coastal Zone Management Act of 1972, assuring that the State agency, if other than the State clearinghouse, responsible for administration of the approved program for the management of the coastal zone, is given opportunity to review the project for its relationship to such program and its consistency therewith.

d. Assuring, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, that appropriate State, multistate, areawide, or local agencies which are authorized to develop and enforce environmental standards are informed of and are given opportunity to review and comment on the environmental significance of proposed projects for which Federal assistance is sought.

e. Providing public agencies charged with enforcing or furthering the objectives of State and local civil rights laws with opportunity to review and comment on the civil rights aspects of the project for which assistance is sought.

f. Providing, pursuant to Part II of these regulations, liaison between Federal agencies contemplating direct Federal development projects and the State or areawide agencies or local governments having plans or programs that might be affected by the proposed project.

g. In the case of a project for which Federal assistance is sought by a special purpose unit of local government, clearinghouses will assure that any unit of general local government having jurisdiction over the area in which the project is to be located has opportunity to confer, consult, and comment upon the project and the application.

h. Where areawide clearinghouse jurisdictions are contiguous, coordinative arrangements should be established between the clearinghouses in such areas to assure that projects in one area which may have an impact on the development of a contiguous area are jointly studied. Any comments and recommendations made by or through a clearinghouse in one area on a project in a contiguous area will accompany the application for assistance to that project.

4. *Consultation and review.* a. State and areawide clearinghouses may have a period of 30 days after receipt of a project notification in which to inform State and multistate agencies and local or regional governments or agencies (including agencies referred to in subparagraphs c, d, and e, above) that may be affected by the proposed project and arrange, as may be necessary, to consult with the applicant thereon. The review may be completed in this period and comments may be submitted to the applicant.

b. If the review is not completed during this period, the clearinghouse may work with the applicant in the resolution of any problems raised by the proposed project during the period in which the application is being completed.

c. In cases where no project notification has been submitted and the clearinghouse receives only a completed application, it may have 60 days to review the completed application. If a completed application is submitted during the first 30 days after a notification has been submitted, the clearinghouse may have 30 days plus the number of days remaining in the initial 30 day notification period to complete its review. In all other cases, the clearinghouse may have 30 days to review a completed application. Where clearinghouses have not completed their reviews during the 30 day notification period, they are strongly urged to give the applicant formal notice to that effect. Where reviews have been completed prior to completion of an application, an information copy will be supplied to the clearinghouse, upon request, when the application is submitted to the funding agency.

d. Written comments submitted to the areawide clearinghouse by other jurisdictions, agencies, or parties will be included as attachments to the comments of areawide clearinghouses, when they are at variance wtih the clearinghouse comments; and others from whom comments were solicited and received should be listed.

e. Under some programs, applicants—primarily nongovernmental — are required to submit confidential information to the funding agency. Such information may relate to the applicant's financial status or structure (e.g., overall investment program or holdings); to personnel (e.g., personal histories of project officers) or may involve proprietary information (e.g., industrial processes, research ideas). Such confidential information need not be included with applications submitted to clearinghouses for review.

f. Applicants will include with the completed application as submitted to the Federal agency (or to the State agency in the case of projects for which the State, under certain programs, has final project approval):

(1) All comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application; or

(2) Where no comments have been received from a clearinghouse, a statement that the procedures outlined in this section have been followed and that no comments or recommendations have been received.

g. Applications for renewal or continuation grants or applications not submitted to or acted on by the funding agency within one year after completion of clearinghouse review will be subject to re-review upon request of the clearinghouse.

5. *Subject matter of comments and recommendations.* Comments and recommendations made by or through clearinghouses with respect to any project are for the purpose of assuring maximum consistency of such project with State, areawide, and local comprehensive plans. They are also intended to assist the Federal agency (or State agency, in the case of projects for which the State under certain Federal grants has final project approval) administering such a program in determining whether the project is in accord with applicable Federal law, particularly those requiring consistency with State, areawide, or local plans. Comments or recommendations may include, but need not be limited to, information about:

a. The extent to which the project is consistent with or contributes to the fulfillment of comprehensive planning for the State, area, or locality.

b. The extent to which the proposed project:

(1) Duplicates, runs counter to, or needs to be coordinated with other projects or activities being carried out in or affecting the area; or

(2) Might be revised to increase its effectiveness or efficiency in relationship to other State, area, or local programs and projects.

c. The extent to which the project contributes to the achievement of State, areawide, and local objectives and priorities relating to natural and human resources and economic and community development as specified in section 401 of the Intergovernmental Cooperation Act of 1968, including:

(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

(2) Wise development and conservation of natural resources, including land, water, mineral, wildlife, and others;

(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

(4) Adequate outdoor recreation and open space;

(5) Protection of areas of unique natural beauty, historical and scientific interest;

(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

(7) Concern for high standards of design.

d. As provided under section 102(2)(C) of the National Environmental Policy Act of 1969, the extent to which the project significantly affects the environment including consideration of:

(1) The environmental impact of the proposed project;

(2) Any adverse environmental effects which cannot be avoided should the proposed project be implemented;

(3) Alternatives to the proposed project;

(4) The relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity; and

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed project or action, should it be implemented.

e. Effects on energy resource supply and demand.

f. The extent to which people or businesses will be displaced and the availability of relocation resources.

g. As provided under section 307(d) of the Coastal Zone Management Act of 1972, in the case of a project located in the coastal zone, the relationship of the project to the approved State program for the management of the coastal zone and its consistency therewith.

h. The extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sectors of the area population, including minority groups.

i. In the case of a project for which assistance is being sought by a special purpose unit of local government, whether the unit of general local government having jurisdiction over the area in which the project is to be located has applied, or plans to apply, for assistance for the same or a similar type project. This information is necessary to enable the Federal (or State) agency to make the judgments required under section 402 of the Intergovernmental Cooperation Act of 1968.

6. *Federal agency procedures.* Federal agencies having programs covered under this Part will develop appropriate procedures for:

a. Informing potential applicants for assistance under such programs of the requirements of this Part (1) in program information materials, (2) in response to inquiries respecting application procedures, (3) in pre-application conferences, or (4) by other means which will assure earliest contact between applicant and clearinghouses.

b. Assuring that all applications for assistance under programs covered by this part have been submitted to appropriate clearinghouses for review prior to their submission to the funding agency. Applications that do not carry evidence that both areawide and State clearinghouses have been given an opportunity to review the application will be returned to the applicant with instructions to fulfill the requirements of this Part. Agencies will insure that all applications contain a State Application Identifier (SAI) number. (This is mandatory for use in notifying clearinghouses of action taken on the application.)

c. Notifying such clearinghouses within seven working days of any major action taken on such applications that have been reviewed by said clearinghouses. Major actions will include awards, rejections, returns for amendment, deferrals, or withdrawals. The standard multipurpose form, SF 424, promulgated by Federal Management Circular 74-7, will be used for this purpose, unless a waiver has been granted by OMB. (See Attachment E.)

d. Where a clearinghouse has recommended against approval of an application or approval only with specific and major substantive changes, and the funding agency approves the application substantially as submitted, the funding agency will provide the clearinghouse, along with the action notice, an explanation therefor.

e. Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the funding agency will consult with the agency assisting the referenced projects prior to acting, if it plans to approve the application.

f. Assuring, in the case of an application submitted by a special purpose unit of local government, where accompanying comments indicate that the unit of general local government having jurisdiction over the area in which the project is to be located has submitted or plans to submit an application for assistance for the same or a similar type project, that appropriate considerations and preferences as specified in section 402 of the Intergovernmental Cooperation Act of 1968, are accorded the unit of general local government. Where such preference canot be so accorded, the agency shall supply, in writing, to the unit of general local government and the Office of Management and Budget its reasons therefor.

7. *Housing programs.* For housing programs of the Department of Housing and Urban Development, the Veterans Administration, and the Farmers Home Administration of the Department of Agriculture the following procedures will be followed, except as provided in subparagraph d below:

a. The appropriate HUD, VA, or USDA/FHA office will transmit to the appropriate State and areawide clearinghouses a copy of the initial application for project approval.

b. Clearinghouses will have 30 days from receipt to review the applications and to forward to the HUD, VA, or USDA/FHA office any comments which they may have, including observations concerning the consistency of the proposed project with State and areawide development plans, the extent to which the proposed project will provide housing opportunities for all segments of the community, and identification of major environmental concerns including impact on energy resource supply and demand. Processing of applications in the HUD, VA, or USDA/FHA office will proceed concurrently with the clearinghouse review.

c. This procedure will include only applications involving new construction or substantial rehabilitation and will apply to applications for loans, loan guarantees, mortgage insurance, or other housing assistance:

(1) In Urbanized Areas, as defined by the U.S. Bureau of the Census (see Appendix A, 1970 Census of Population, Characteristics of the Population or Characteristics of Housing), to:

(a) Subdivisions having 25 or more lots.

(b) Multifamily projects having 50 or more dwelling units.

(c) Mobile home courts with 50 or more spaces.

(d) College housing provided under the debt service or direct loan programs for 200 or more students.

(2) In all other areas, to:

(a) Subdivisions having 10 or more lots.

(b) Multifamily projects having 25 or more dwelling units.

(c) Mobile home courts with 25 or more spaces.

(d) College housing provided under the debt service or direct loan programs for 100 or more students.

d. As an alternative to the above procedure, the developer may submit his application directly to the appropriate clearinghouses prior to submitting it to the Federal agency. In such cases, the application, when submitted to the Federal agency, will be accompanied by the comments of the clearinghouses.

e. Exemption: Applications for additional units in a subdivision substantially completed (i.e., with streets, water and sewer facilities, culverts, etc.) are exempted from this requirement when:

(1) The subdivision was approved and/or recorded by the appropriate unit of local government within three years of the application submittal; and

(2) In cases of subdivisions approved more than three years prior, the clearinghouses waive the requirement.

This exemption does not apply to applications for housing in an undeveloped subdivision or in proposed extensions of existing subdivisions.

8. *Coverage, exceptions, and variations.* a. Generally, this Part of this Circular and the laws on which it is based are concerned with programs providing financial assistance to projects and activities which have an impact on State, areawide, and local development, including development of natural, economic, and human resources. This Part is concerned with achieving the most effective and efficient utilization of Federal assistance programs through coordination among and between Federal, multistate, State, areawide, and local plans and programs and the elimination of conflict, overlap, and duplication of projects and activities under such programs. Coverage under this Part includes, or will be extended from time to time as deemed necessary and practicable to include programs bearing upon these concerns and objectives.

b. Programs not considered appropriate to this Part are programs of the following types:

(1) Direct financial assistance to individuals or families for housing, welfare, health care services, education, training, economic improvement, and other direct assistance for individual and family enhancement.

(2) Incentive payments or insurance for private sector activities not involving real property development or land use and development.

(3) Agricultural crop supports or payments.

(4) Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual States or localities.

(5) Research, not involving capital construction, which is national in scope or is not resigned to meet the needs or to address problems of a particular State, area, or locality (except in the case of demonstration or pilot research programs where projects may have an impact on the community or area in which they are being conducted).

(6) Assistance to educational, medical, or similar service institutions or agencies for internal staff development or management improvement purposes.

(7) Assistance to educational institutions for activities that are part of a school's regular academic program and are not related to local programs of health, welfare, employment, or other social services.

(8) Assistance for construction involving only routine maintenance, repair, or minor construction which does not change the use or the scale or intensity of use of the structure or facility.

c. OMB will consider Federal agency requests for exemption of certain classes of projects or activities under programs otherwise covered which:

(1) Meet any of the above characteristics of programs inappropriate for coverage under this Part;

(2) Are of small scale or size or are highly localized as to impact; or

(3) Display other characteristics which might make review impractical.

d. OMB will consider Federal agency requests for procedural variations from normal review processes:

(1) On a temporary basis for programs with time constraints brought about because of start up requirements or other unusual circumstances beyond the control of the funding agency. (Note: Delay in fund availability is not normally an acceptable reason for a variation. When a delay is anticipated, applicants should be instructed to have their applications reviewed by clearinghouses in readiness for submission when funds become available.)

(2) For programs where statutory or related procedural limitations make the normal review processes impracticable.

e. All requests from Federal agencies for exemptions or procedural variations should be addressed to the Associate Director for Management and Operations, Office of Management and Budget.

f. Individual clearinghouses may exempt certain types of projects from review for reasons indicated above or for other reasons appropriate to the State or area.

g. Applicants should be made aware that, in various States, State law requires review of applications for Federal assistance under various programs not covered by this Part. Implementation of such laws is enforced through State rules and regulations, and applicants are urged to ascertain the existence of such laws and to acquaint themselves with applicable State procedures.

9. *Joint Funding.* Applications for assistance in activities under the Joint Funding Simplification Act (P.L. 93-510) or any other joint funding authority, which involve activities funded under one or more of the programs covered under this Part, will be subject to the requirements of this Part.

10. *Agency procedures and regulations.* a. Proposed agency procedures and regulations for implementing the requirements of this Part will be published in the FEDERAL REGISTER as specified ir paragraph 7 of this Circular. Programs to which the procedures and regulations will apply will be cited by their numbers in the *Catalog of Federal Domestic Assistance.* Where such numbers have not yet been assigned, programs will be referenced by Public Law and section or by U.S. Code citation. Subsequent amendments to such procedures and regulations will also be published pursuant to paragraph 7 of the Circular.

b. As a part of such proposed procedures and regulations published in the FEDERAL REGISTER, agencies may identify specific types of projects which they believe should be exempt from coverage under programs for which proposed procedures and regulations are being published. Such publication will constitute a formal request for exemption to the Office of Management and Budget, to which it will respond in its review of the proposed procedures and regulations.

c. OMB will assist and cooperate with agencies in developing such procedures and regulations.

d. A copy of agency internal procedures for implementation of this Part, if not contained in the above procedures and regulations, will be sent to the Associate Director of the Office of Management and Budget for Management and Operations.

11. *Reports and directories.* a. The Director of the Office of Management and Budget may require reports, from time to time, on the implementation of this Part.

b. The Office of Management and Budget will maintain and distribute to appropriate Federal agencies a directory of State and areawide clearinghouses.

c. The Office of Management and Budget will notify Federal Regional Councils, clearinghouses, and Federal agencies of any excepted categories of projects under covered programs.

PART II: DIRECT FEDERAL DEVELOPMENT

1. *Purpose.* The purpose of this Part is to:

a. Provide State and local government with information on projected Federal development so as to facilitate coordination with State, areawide, and local plans and programs.

b. Provide Federal agencies with information on the relationship of proposed direct Federal development projects and activities to State, areawide, and local plans and programs; and to assure maximum feasible consistency of Federal developments with State, areawide, and local plans and programs.

c. Provide Federal agencies with information on the possible impact on the environment of proposed Federal development.

2. *Coordination of direct Federal development projects with State, areawide, and local development.* a. Federal agencies having responsibility for the planning and construction of Federal buildings and installations or other Federal public works or development or for the acquisition, use, and disposal of Federal land and real property will establish procedures for:

(1) Consulting with Governors, State and areawide clearinghouses, and local elected officials at the earliest practicable stage in project or development planning on the relationship of any plan or project to the development plans and programs of the State, area, or locality in which the project is to be located. In the case of projects in the National Capital Region, such consultation should be undertaken in cooperation with the the National Capital Planning Commission.

(2) Assuring that any such Federal plan or project is consistent or compatible with State, areawide, and local development plans and programs identified in the course of such consultations. Exceptions will be made only where there is clear justification. Explanation of any necessary inconsistency or incompatibility will be provided, in writing, to the appropriate clearinghouses.

(3) Providing State, areawide, and local agencies which are authorized to develop and enforce environmental standards with adequate opportunity to review such Federal plans and projects pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. Any comments of such agencies will accompany the environmental impact statement submitted by the Federal agency.

(4) Providing, in the case of projects located in the coastal zone, the State agency responsible for administration of the approved program for the management of the coastal zone with opportunity to review the relationship of the proposed project to such program and its consistency therewith.

(5) Providing, through the appropriate clearinghouses, Health Systems Agencies and State Health Planning and Development Agencies designated pursuant to the National Health Planning and Resources Development Act of 1974 with adequate opportunity to review Federal projects for construction and/or equipment involving capital expenditures exceeding $200,000 for modernization, conversion, and expansion of Federal inpatient care facilities, which alter the bed capacity or modify the primary function of the facility, as well as plans for provision of major new medical care services. (Excluded are projects to renovate or install mechanical systems, air conditioning systems, or other similar internal system modifications.) The agencies are expected to evaluate proposed Federal projects for consistency with areawide and local health delivery plans and health supply-demand situations, as well as considering clearinghouse comments on such specific points as those listed in paragraph 5 of Part I. The comments of such agencies and any clearinghouse comments will accompany the plan and budget requests submitted by the Federal agency to the Office of Management and Budget or a certification that the agencies and clearinghouses had been provided a reasonable time to comment and had failed to do so.

3. *Use of clearinghouses.* The State and areawide planning and development clearinghouses established pursuant to Part I will be utilized to the greatest extent practicable to effectuate the requirements of this Part. Agencies are urged to establish early contact with clearinghouses to work out arrangements for carrying out the consultation and review required under this Part, including identification of types of projects considered appropriate for consultation and review. Clearinghouses may utilize criteria set forth in paragraph 5 of Part I in evaluating direct Federal development projects.

4. *Federal licenses and permits.* Agencies responsible for granting Federal licenses and permits for development projects and activities which would have a significant impact on State, interstate, areawide, or local development plans or programs or on the environment are strongly urged to consult with State and areawide clearinghouses and to seek their evaluations of such impacts prior to granting such licenses or permits.

5. *Agency procedures and regulations.* a. To the greatest extent possible, agencies engaged in direct Federal development activities will follow the general procedures outlined under Part I of Attachment A in affording State and areawide clearinghouses opportunities to review and comment on plans and developments.

b. Where legislative or executive constraints or related circumstances do not permit following such procedures, agency procedures and regulations will set forth for each program, at a minimum:

(1) The point in project planning at which clearinghouses will be contacted;

(2) The minimum time clearinghouses will be afforded to review the proposed project;

(3) The minimum information to be provided to the clearinghouses; and

(4) Procedures for notifying clearinghouses on actions taken on such project (implementation, timing, postponement, abandonment) and explaining actions taken contrary to clearinghouse recommendations.

c. The Office of Management and Budget will consider other procedures such as memoranda of agreement between Federal installations and clearinghouses for coordinating Federal and civilian planning, that are designed to achieve the objectives of this Part.

d. All proposed agency procedures and regulations to implement this Part will be published in the Federal Register pursuant to paragraph 7 of the Circular. OMB will assist and cooperate with agencies in developing such procedures and regulations.

PART III: STATE PLANS

1. *Purpose.* The purpose of this Part is to provide Federal agencies with information about the relationship to State or areawide comprehensive planning of State plans which are required or form

the basis for funding under various Federal programs.

3. *State plans*. To the extent not presently required by statute or administrative regulation, Federal agencies administering programs requiring by statute or regulation a State plan as a condition of assistance under such programs will require that the Governor, or his delegated agency, be given the opportunity to comment on the relationship of such State plan to comprehensive and other State plans and programs and to those of affected areawide or local jurisdictions. The Governor is urged to involve areawide clearinghouses in the review of State plans, particularly where such plans have specific applicability to or affect areawide or local plans and programs.

a. The Governor will be afforded a period of 45 days in which to make such comments, and any such comments will be transmitted with the plan.

b. A "State plan" under this Part is defined to include any required supporting planning reports or documentation that indicate the programs, projects, and activities for which Federal funds will be utilized. Such reports or documentation will also be submitted for review at the request of the Governor or the agency he has designated to perform review under this Part.

c. Programs requiring State plans are listed in Appendix II of the *Catalog of Federal Domestic Assistance*.

PART IV: COORDINATION OF PLANNING IN MULTIJURISDICTIONAL AREAS

1. *Policies and objectives*. The purposes of this Part are:

a. To encourage and facilitate State and local initiative and responsibility in developing organizational and procedural arrangements for coordinating comprehensive and functional planning activities.

b. To eliminate overlap, duplication, and competition in areawide planning activities assisted or required under Federal programs and to encourage the most effective use of State and local resources available for planning.

c. To minimize inconsistency among Federal administrative and approval requirements placed on areawide planning activities.

d. To encourage the States to exercise leadership in delineating and establishing a system of planning and development districts or regions in each State, which can provide a consistent geographic base for the planning and coordination of Federal, State, and local development programs.

e. To encourage Federal agencies administering programs assisting or requiring areawide planning to utilize agencies that have been designated to perform areawide comprehensive planning in planning and development districts or regions established pursuant to subparagraph d above (generally, areawide clearinghouses designated pursuant to Part I of Attachment A of this Circular) to carry out or coordinate planning under such programs. In the case of interstate metropolitan areas, agencies designated as metropolitan areawide clearinghouses should be utilized to the extent possible to carry out or coordinate Federally assisted or required areawide planning.

2. *Common or consistent planning and development districts or regions*. a. Prior to the designation or redesignation (or approval thereof) of any planning and development district or region under any Federal program, Federal agency procedures will provide a period of 30 days for the Governor(s) of the State(s) in which the district or region will be located to review the boundaries thereof and comment upon its relationship to planning and development districts or regions established by the State. Where the State has established such planning and development districts, the boundaries of areas designated under Federal programs will conform to them unless there is clear justification for not doing so.

b. Where the State has not established planning and development districts or regions which provide a basis for evaluation of the boundaries of the area proposed for designation, major units of general local government and the appropriate Federal Regional Council in such areas will also be consulted prior to designation of the area to assure consistency with districts established under inter-local agreement and under related Federal programs.

c. The Office of Management and Budget will be notified through the appropriate Federal Regional Council by Federal agencies of any proposed designation and will be informed of such designation when it is made, including such justifications as may be required under subparagraph a above.

3. *Common and consistent planning bases and coordination of related activities in multijurisdictional areas*. Each agency will develop procedures and requirements for applications for multijurisdictional planning and development assistance under appropriate programs to assure the fullest consistency and coordination with related planning and development being carried on by the areawide comprehensive planning agency or clearinghouse designated under Part I of this Circular in the multijurisdictional area.

Such procedures shall include provision for submission to the funding agency by any applicant for multijurisdictional planning assistance, if the applicant is other than an areawide comprehensive planning agency referred to in paragraph 1e of this Part, of a memorandum of agreement between the applicant and such areawide comprehensive planning agency covering the means by which their planning activities will be coordinated. The agreement will cover but need not be limited to the following matters:

a. Identification of relationships between the planning proposed by the applicant and that of the areawide agency and of similar or related activities that will require coordination;

b. The organizational and procedural arrangements for coordinating such activities, such as: Overlapping board membership, procedures for joint reviews of projected activities and policies, information exchange, etc.;

c. Cooperative arrangements for sharing planning resources (funds, personnel, facilities, and services);

d. Agreed upon base data, statistics, and projections (social, economic, demographic) on the basis of which planning in the area will proceed.

Where an applicant has been unable to effectuate such an agreement, he will submit a statement indicating the efforts he has made to secure agreement and the issues that have prevented it. In such case, the funding agency, in consultation with the Federal Regional Council and the State clearinghouse designated under Part I, will undertake, within a 30 days period after receipt of the application, resolution of the issues before approving the application, if it is otherwise in good order.

4. *Joint funding*. Where it will enhance the quality, comprehensive scope, and coordination of planning in multijurisdictional areas, Federal agencies will, to the extent practicable, provide for joint funding of planning activities being carried on therein.

5. *Coordination of agency procedures and regulations*. With respect to the steps called for in paragraphs 2 and 3 of this Part, departments and agencies will develop for relevant programs appropriate draft procedures and regulations which will be published in the FEDERAL REGISTER pursuant to paragraph 7 of this Circular. Copies of such drafts will be furnished to the Director of the Office of Management and Budget and to the heads of departments and agencies administering related programs. The Office, in consultation with the agencies, will review the draft procedures and regulations to assure the maximum obtainable consistency among them.

PART V: DEFINITIONS

Term used in this Circular will have following meanings:

1. *Federal agency*—any department, agency, or instrumentality in the executive branch of the Government and any wholly owned Government corporation.

2. *State*—any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State.

3. *Unit of general local government*—any city, county, town, parish, village, or other general purpose political subdivision of a State.

4. *Special purpose unit of local government*—any special district, public purpose corporation, or other strictly limited purpose political subdivision of a

State, but shall not include a school district.

5. *Federal assistance, Federal financial assistance, Federal assistance program, or federally assisted programs*—programs that provide assistance through grant or contractual arrangements. They include technical assistance programs, or programs providing assistance in the form of loans, loan guarantees, or insurance. The term does not include any annual payment by the United States to the District of Columbia authorized by article VI of the District of Columbia Revenue Act of 1947 (D.C. Code sec. 47–2501a and 47–2501b).

6. *Funding agency.* The Federal agency or, in the case of certain formula grant programs, the State agency which is responsible for final approval of applications for assistance.

7. *Comprehensive planning,* to the extent directly related to area needs or needs of a unit of general local government, including the following:

a. Preparation, as a guide for governmental policies and action, of general plans with respect to:

(1) Pattern and intensity of land use.

(2) Provision of public facilities (including transportation facilities) and other government services.

(3) Effective development and utilization of human and natural resources.

b. Preparation of long range physical and fiscal plans for such action.

c. Programming of capital improvements and other major expenditures, based on a determination of related urgency, together with definitive financing plans for such expenditures in the earlier years of the program.

d. Coordination of all related plans and activities of the State and local governments and agencies concerned.

e. Preparation of regulatory and administrative measures in support of the foregoing.

8. *Metropolitan area*—a standard metropolitan statistical area as established by the Office of Management and Budget, subject, however, to such modifications and extensions as the Office of Management and Budget may determine to be appropriate for the purposes of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and these Regulations.

9. *Areawide*—Comprising, in metropolitan areas, the whole of contiguous urban and urbanizing areas; and in nonmetropolitan areas, contiguous counties or other multijurisdictional areas having common or related social, economic, or physical characteristics indicating a community of developmental interests; or, in either, the area included in a substate district designated pursuant to paragraph 1d, Part IV, Attachment A of this Circular.

10. *Planning and development clearinghouse or clearinghouse* includes:

a. "*State clearinghouse*"—an agency of the State Government designated by the Governor or by State law to carry out the requirements of Part I of Attachment A of this Circular.

b. "*Areawide clearinghouse*"—(1) In nonmetropolitan areas a comprehensive planning agency designated by the Governor (or Governors in the case of regions extending into more than one State) or by State law to carry out requirements of this Circular; or

(2) In metropolitan areas an areawide agency that has been recognized by the Office of Management and Budget as an appropriate agency to perform review functions under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and this Circular.

11. *Multijurisdictional area*—any geographical area comprising, encompassing, or extending into more than one unit of general local government.

12. *Planning and development district or region*—a multijurisdictional area that has been formally designated or recognized as an appropriate area for planning under State law or Federal program requirements.

13. *Direct Federal development*—planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies; or the leasing of real property for Federal use where the use or intensity of use of such property will be substantially altered.

ATTACHMENT B—CIRCULAR NO. A-95 REVISED

Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 as amended (80 Stat. 1263, 82 Stat. 208)

"Sec. 204. (a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewage facilities and waste treatment works, highways, transportation facilities, low enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review—

"(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

"(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

"(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

"(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph b(1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c), or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

"(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this title, involves a major change in the project covered by the application prior to such amendment.

"(c) The Bureau of the Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section."

TITLE IV OF THE INTERGOVERNMENTAL COOPERATION ACT OF 1968 (82 STAT. 1103)

"*Title IV—Coordinated Intergovernmental Policy and Administration of Development Assistance Programs*"

"*Declaration of development assistance policy*"

"Sec. 401. (a) The economic and social development of the Nation and the achievement of satisfactory levels of living depend upon the sound and orderly development of all areas, both urban and rural. Moreover, in a time of rapid urbanization, the sound and orderly development of urban communities depends to a large degree upon the social and economic health and the sound development of small communities and rural areas. The President shall, therefore, establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives. Such rules and regulations shall provide for full consideration of the concurrent achievement of the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between such objectives when they conflict:

"(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

"(2) Wise development and conservation of natural resources, including land, water, minerals, wildlife, and others;

"(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

"(4) Adequate outdoor recreation and open space;

"(5) Protection of areas of unique natural beauty, historical and scientific interest;

"(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

"(7) Concern for high standards of design.

"(b) All viewpoints—national, regional, State and local—shall, to the extent possible, be fully considered and taken into account in planning Federal or federally assisted development programs and projects. State and local government objectives, together with the objectives of regional organizations shall be considered and evaluated within a framework of national public objectives, as expressed in Federal law, and available projections of future national conditions and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

"(c) To the maximum extent possible, consistent with national objectives, all Federal aid for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including but not limited to housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

"(d) Each Federal department and agency administering a development assistance program shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs.

"(e) Insofar as possible, systematic planning required by individual Federal programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning."

"Favoring units of general local government"

"Sec. 402. Where Federal law provides that both special-purpose units of local government and units of general local government are eligible to receive loans or grants-in-aid, heads of Federal departments and agencies shall, in the absence of substantial reasons to the contrary, make such loans or grants-in-aid to units of general local government rather than to special-purpose units of local government."

"Rules and regulations"

"Sec. 403. The Bureau of the Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this title."

ATTACHMENT C—CIRCULAR No. A-95 REVISED

SECTION 102(2)(C) OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (83 STAT. 853)

"Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall— * * *

"(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

"(i) the environmental impact of the proposed action,

"(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

"(iii) alternatives to the proposed action,

"(iv) the relationship between local short-term use of man's environment and the maintenance and enhancement of long-term productivity, and

"(v) any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

"Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, United States Code, and shall accompany the proposal through the existing agency review processes; * * *."

ATTACHMENT D—CIRCULAR No. A—95 REVISED

Coverage of Programs Under Attachment A, Part I

1. Programs listed below are referenced several ways, due to transitional phases in program development, funding status, etc. Generally, citations are to programs as they are listed in the June, 1975 *Catalog of Federal Domestic Assistance*. For certain new legislation, *Catalog* citations have not yet been developed. In such cases, references are to Public Law number and section. When no funding is available for a program, it is not generally listed in the *Catalog* or this Attachment; but if funding becomes available for a program previously covered, it continues to be covered unless specifically exempted by OMB. The *Catalog* is issued annually and revised periodically during the year. Every effort will be made to keep Appendix I and Attachment D current. Reference should always be made to the one bearing the latest issue date. (However, the update to the 1975 *Catalog* will not reflect all the changes herein. Therefore, this list should be referenced until issuance of the 1976 *Catalog*.)

Asterisks indicate certain State formula grant programs requiring State plans which are also covered under Part III. When listed under Part I, reference is to applications for subgrants under the State allocation, not to the State's application for its allocation under the formula grant which is reviewable under Part III.

2. Heads of Federal departments and agencies may, with the concurrence of the Office of Management and Budget, exclude certain categories of projects or activities under listed programs from the requirements of Attachment A, Part I. (Also see Part I, paragraph 8.)

3. Covered Programs*

The following federal aid programs are subject to review and comment under OMB Circular A-95. The Notations "I" and "III" associated with a program indicate, respectively, that the program is subject to the usual A-95 clearinghouse notification, review, and comment routine (I), and review of federally required state plans by the governors.

Department of Agriculture

10.405	Farm Labor Housing Loans and Grants, I
10.409	Irrigation, Drainage, and Other Soil and Water Conservation Loans, I
10.410	Low to Moderate Income Housing Loans, I
10.411	Rural Housing Site Loans, I
10.414	Resource Conservation and Development Loans, I
10.415	Rural Rental Housing Loans, I
10.418	Water and Waste Disposal Systems for Rural Communities, I
10.419	Watershed Protection and Flood Prevention Loans, I
10.420	Rural Self-Help Housing Technical Assistance, I
10.422	Business and Industrial Loans, I
10.423	Community Facilities Loans, I
10.430	Energy Impacted Area Development Assistance Program, I
10.431	Technical and Supervisory Assistance Grants, I
10.551	Food Stamps, III
10.553	School Breakfast Program, III
10.555	National School Lunch Program, III
10.557	Special Supplemental Food Program for Women, Infants, and Children, III
10.559	Summer Food Service Program for Children, III
10.560	State Administrative Expenses for Child Nutrition, III
10.561	State Administrative Matching Grants for Food Stamp Program, III
10.564	Nutrition Education and Training Program, III
10.565	Commodity Supplemental Food Program, III
10.664	Cooperative Forestry Assistance, I
10.901	Resource Conservation and Development, I
10.904	Watershed Protection and Flood Prevention, I

Department of Commerce

11.300	Economic Development — Grants for Public Works and Development Facilities, I
11.302	Economic Development — Support for Planning Organizations, I
11.303	Economic Development Technical Assistance, I
11.304	Economic Development — Public Works Impact Projects, I
11.305	Economic Development — State and Local Economic Development Planning, I
11.306	Economic Development — District Operational Assistance, I
11.307	Special Economic Development and Adjustment Assistance Program — Long-Term Economic Deterioration, I
11.405	Anadromous and Great Lakes Fisheries Conservation, I
11.407	Commercial Fisheries Research and Development, I
11.419	Coastal Zone Management Program Administration, I
11.420	Coastal Zone Management Estuarine Sanctuaries, I
11.421	Coastal Energy Impact Program — Formula Grants, I
11.422	Coastal Energy Impact Program — Planning Grants, I
11.423	Coastal Energy Impact Program — Loans and Guarantees, I
11.424	Coastal Energy Impact Program — Environmental Grants, I
11.425	Coastal Energy Impact Program — Outer Continental Shelf State Participation Grants, I
11.427	Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program, I
11.550	Public Telecommunications Facilities, I

Department of Defense

11.110	Planning Assistance to States, III

Department of Health and Human Services

13.110	Maternal and Child Health Federal Consolidated Programs, I
13.217	Family Planning Projects, I
13.224	Community Health Centers, I
13.246	Migrant Health Centers Grants, I
13.256	Health Maintenance Organizations, I
13.258	National Health Service Corps, I
13.260	Family Planning Services, I
13.268	Childhood Immunization Grants, I
13.293	State Health Planning and Development Agencies, I
13.294	Health Planning — Health Systems Agencies, I
13.392	Cancer — Construction, I
13.600	Administration for Children, Youth and Families — Head Start, I
13.612	Native American Progams — Financial Assistance Grants, I
13.623	Administration for Children, Youth and Families — Runaway Youth, I
13.628	Child Abuse and Neglect Prevention and Treatment, I

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* Source: U.S. Office of Management and Budget, Catalogue of Federal Domestic Assistance, Appendix I: Programs Requiring Circular Coordination, June 1982 update.

13.630	Administration on Developmental Disabilities — Basic Support and Advocacy Grants, I, III
13.631	Administration on Developmental Disabilities — Special Projects, I
13.633	Special Programs for the Aging — Title III, Parts A and B -- Grants for Supportive Services and Senior Centers, I, III
13.635	Special Programs for the Aging — Title III, Part C -- Nutrition Services, I, III
13.645	Child Welfare Services — State Grants, III
13.646	Work Incentive Program, III
13.658	Foster Care — Title IV — E, III
13.659	Adoption Assistance, III
13.661	Native American Programs — Research, Demonstration, and Evaluation, I
13.662	Native American Programs — Training and Technical Assistance, I
13.668	Special Programs for the Aging — Title IV -- Training, Research and Discretionary Projects and Programs, I
13.676	Surplus Property Utilization, I
13.679	Child Support Enforcement, III
13.714	Medical Assistance Program, III
13.776	Professional Standards Review Organizations, I
13.777	State Health Care Providers Survey Certification, III
13.808	Assistance Payments — Maintenance Assistance, III
13.810	Assistance Payments — State and Local Training, III
13.818	Low-Income Home Energy Assistance, III
13.823	Primary Care Research and Demonstration Projects, I
13.965	Coal Miners Respiratory Impairment Treatment Clinics and Services, I, III
13.977	Preventive Health Services — Venereal Disease Control Grants, I
13.985	Eye-Research — Facility Construction, I
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metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

COG #23

A-95 METROPOLITAN CLEARINGHOUSE MEMORANDUM

DATE: 2/10/83

TO: Mr. Reginald Griffith
Executive Director
National Capital Planning Commission
1325 G Street, NW - 10th Fl.
Washington, DC 20576

SUBJECT: PROJECT NOTIFICATION AND REVIEW FOR

PROJECT: COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL - PROPOSED FEDERAL FACILITIES ELEMENT

COG NO.: 83-04-005

APPLICANT: NATIONAL CAPITAL PLANNING COMMISSION

The project title, COG number, and applicant's name should be used in all correspondence with COG concerning this project. Correspondence should be addressed to Mr. Walter A. Scheiber, Executive Director. The staff may be reached by telephone at 223-6800.

FINAL DISPOSITION

☐ We have concluded review of the above item and have determined that its nature does not warrant metropolitan comments. A copy of this memorandum and any attachments should accompany your application to indicate that the Metropolitan Clearinghouse review has been completed.

☐ A copy of the above item has been sent to ____________________ for review and comment, with direct response to be made by ____________________. Copies of any local agency comments which you receive should also accompany your application to the Federal agency.

☒ We have concluded review of the above item and have determined that it is in general accord with the metropolitan planning process and COG's adopted policies. A copy of this memorandum and any attachments should accompany your application to indicate that the Metropolitan Clearinghouse review has been completed.

☐ We have concluded review of the above item and submit herewith, the attached Metropolitan Clearinghouse Review Comments. A copy of this memorandum and the attached comments should accompany your application when submitted to the Federal agency to indicate that the Metropolitan Clearinghouse review has been completed.

EXECUTIVE DIRECTOR

WE APPRECIATE YOUR COOPERATION

Clearinghouse review comments will be valid for a period of two years from the date of this A-95 Metropolitan Clearinghouse Memorandum. All projects not submitted to the Federal funding agency within that period must be resubmitted to the Clearinghouse for update of the review comments before formal application is made to the Federal Government.

City of Alexandria, Virginia

1964
All-America City

February 10, 1983

Mr. Walter Scheiber
Executive Director
Metroplitan Washington
  Council of Governments
1875 Eye Street, N.W. - Suite 200
Washington, D.C. 20006

Dear Walt:

Enclosed is the position of the Alexandria City Council on the recent National Capital Planning Commission proposals regarding the future of National Airport. This position was adopted by City Council on February 8, 1983 and reflects their most recent action on this matter.

Sincerely,

Douglas Harman
City Manager

ah
Enclosure

cc: The Honorable Mayor
  and Members of City Council

RESOLUTION NO. 931

RESOLVED, that the Alexandria City Council opposes the recommendation to close National Airport. The City Council supports reasonable limitations on passenger volume and a more rational and coordinated plan for service at Dulles International and National airports. Limitations at National Airport should reflect safety, noise and traffic congestion factors while reflecting an appropriate role for National Airport in servicing eastern United States traffic taking advantage of Metrorail's quick access to government and business offices in Alexandria and elsewhere.

ADOPTED: February 8, 1983

Helen Holleman City Clerk

City of Alexandria, Virginia

Charles E. Beatley, Jr.
Mayor

All-America City

January 12, 1983

Mr. Walter A. Scheiber
Executive Director
Metropolitan Washington Council of Governments
1875 Eye Street, N.W.
Suite 200
Washington, D.C. 20006

Dear ~~Mr. Scheiber~~ Walt:

On December 14, 1982 the Alexandria City Council reviewed the Federal Employment and Federal Facilities Elements of the National Capital Planning Commission's Comprehensive Plan for the National Capital. The following recommendations were approved to be transmitted to the National Capital Planning Commission:

1) NCPC delete the reference to a Federal Employment distribution goal of 60 percent in the District of Columbia and 40 percent in the remainder of the region as cited on page 10 of the proposed Federal Employment Element of the Comprehensive Plan for the National Capital;

2) NCPC reevaluate the Federal Employment planning ranges targeted for the Year 2000 (cited on page 11 of the proposed Federal Employment Element of the Comprehensive Plan for the National Capital) to deal more equitably with Northern Virginia and take better advantage of the Regional Metrorail System.

The Planning staff report is attached for your information. Please call Engin Artemel, Director, Planning and Community Development (838-4666) with any questions.

Sincerely,

Chuck Beatley

Charles E. Beatley, Jr.
Mayor

CEB:GSC:bjm
Attachment

cc: City Council
City Manager

"Home Town of George Washington and Robert E. Lee"

29

12-14-82

DATE: December 9, 1982

TO: The Honorable Mayor and Members of City Council

FROM: Douglas Harman, City Manager DH

SUBJ: Federal Employment and Federal Facilities Elements of the Comprehensive Plan for the National Capital

ISSUE: Comments to the National Capital Planning Commission on the Federal Employment and Federal Facilities Elements of the Comprehensive Plan for the National Capital.

RECOMMENDATION: That the City Council approve the following two recommendations to be transmitted to the National Capital Planning Commission: 1) NCPC delete the reference to a federal employment distribution goal of 60 percent in the District of Columbia and 40 percent in the remainder of the region as cited on page 10 of the Proposed Federal Employment Element of the Comprehensive Plan for the National Capital; 2) NCPC reevaluate the federal employment planning ranges targeted for Year 2000 (cited on page 11 of the Proposed Federal Employment Element of the Comprehensive Plan for the National Capital) to deal more equitably with Northern Virginia and take better advantage of the regional metrorail system.

DISCUSSION: At its meeting on October 21, 1982 the National Capital Planning Commission (NCPC) authorized presentation of the proposed Federal Employment and Federal Facilities elements of the Comprehensive Plan for the National Capital and the related Planning Report and Environmental Assessment to appropriate federal, regional, and local authorities and other interested organizations and individuals for comment and recommendations.

The Proposed Federal Employment element identifies planning policies related to federal employment and future employment levels at major federal employment areas in the region. It includes a summary of background data, issues, and forecasts of future employment. The Proposed Federal Facilities element establishes criteria for the location of federal facilities in the region and planning policies to guide their development.

The Planning Report provides background information used to prepare both the Federal Employment and Federal Facilities Elements as well as the Environmental Assessment, which identifies the potential impacts of alternative federal deployment policies on the region's environment to the Year 2000. Prior to adoption of these elements, the Commission will consider both the draft Environmental Impact Statement currently being prepared for the proposed development of the Southeast Federal Center and the Navy Yard in Southeast Washington and public comments. These comments are needed by the National Capital Planning Commission by December 31, 1982.

The most publicized and controversial proposed policies focus on the distribution of federal employees throughout the region. NCPC proposes that "the historic relative distribution of federal employment, approximately 60 percent in the District of Columbia, the established seat of National Government, and 40 percent elsewhere in the region, should continue during the next two decades." The distribution of federal employment in 1978 was 54 percent in the District of Columbia, 27 percent in Virginia, and 19 percent in Maryland. At a 1978 employment level of 436,000, each percent is the equivalent of 4,360 employees.

NCPC staff explains that the 60/40 distribution is a general guide and not to be interpreted as a policy favoring extreme concentration of federal employment in the District of Columbia. They further explain that this policy is a result of two factors: 1) Little growth in federal employment or an actual decline (predicted range is 400,000 to 452,200 in the Year 2000 in contrast to 436,000 in 1978) and 2) The desire to maximize the use of federally owned facilities and reduce the amount of leased space (currently 29 percent is in leased space and NCPC proposes a goal of 20 percent). This logic results in the following NCPC policy with regard to federal employment levels and target Year 2000 employment levels:

In order to provide for the efficient utilization of federal facilities, accomplish long-range planning objectives, and ensure adequate provision of public utilities and services, the planning ranges targeted for the number of employees assigned to major federal employment areas in the region are established as follows:

PLANNING RANGES TARGETED FOR YEAR 2000 EMPLOYMENT LEVELS AT MAJOR FEDERAL EMPLOYMENT AREAS

Major Federal Employment Areas 2/ (10,000 or more employees)	Number of Employees (000's) 3/ Planning Ranges Targeted for Year 2000 on Owned and Leased Sites 4/			1978 Actual	1978-2000 Change		
DISTRICT OF COLUMBIA	240.0	to	271.3	236.0	+4.0	to	+35.3
Central Employment Area 1/	170.0	-	198.0	184.8	-14.8	-	+13.2
Southeast Federal Area	26.0	-	30.0	7.6	+18.4	-	+22.4
Bolling/Anacostia Federal Area	16.0	-	18.0	7.5	+8.5	-	+10.5
All other Federal employment locations in the District	28.0	-	25.3	36.1	-8.1		-10.8
VIRGINIA portions of the Region	91.6	to	102.3	118.6	-27.0	to	-16.3
Arlington-Pentagon-Airport Complex 1/	44.9	-	51.5	62.0	-17.1	-	-10.5
Belvoir Federal Area	11.3	-	11.0	10.8	+0.5	-	+0.2
Quantico Federal Area	10.9	-	10.5	11.4	-0.5	-	-0.9
All other Federal employment locations in Virginia	24.5	-	29.3	34.4	-9.9	-	-5.1
MARYLAND portions of the Region	68.4	to	78.6	81.4	-13.0	to	-2.8
Andrews AFB Area	10.0	-	9.9	10.2	-0.2	-	-0.3
Suitland Federal Area	5.4	-	11.0	6.4	-1.0	-	+4.6
Beltsville Federal Area	11.5	-	13.7	12.7	-1.2	-	+1.0
NIH - Navy Medical Area	16.0	-	18.0	15.1	+0.9	-	+2.9
All other Federal employment locations in Maryland	25.5	-	26.0	37.0	-11.5	-	-11.0
REGIONAL TOTALS	400.0	-	452.2	436.0	-36.0		+16.2

See footnotes on the following page.

1/	Metropolitan Center	214.9	to	249.3	246.8	-31.9	to	+2.7
	Central Employment Area (D.C.)	170.0	-	198.0	184.8	-14.8	-	+13.2
	Arlington-Pentagon-Airport Complex	44.9	-	51.3	62.0	-17.1	-	-10.5

Adding the employment in the CEA with the Arlington-Pentagon Complex provides the employment in the Metropolitan Center, an area identified by the Washington Metropolitan Council of Governments for planning and policy purposes. The boundaries and detailed data for the Metropolitan Center are included in the "lanning Report for this element.

2/ The boundaries and the installations included within the major Federal employment areas are shown on Diagrams 1 and 2 and identified in the Definitions section.

3/ The number of employees listed are "assigned employment" or the number of persons on the basis of which Federal agencies plan and assign work space in Federally owned or leased buildings. It includes permanent, temporary, and part-time Federal civilian employees and military personnel, budgeted vacancies, and non-Federal employees, such as private contractors or volunteers who are provided work space at Federal facilities.

4/ The Planning Targets reflect the two scenario forecasts, Decline-Stabilization and Low Growth, for the Year 2000 considered most probable by the Commission as described in the Background Section and allocated in accordance with the Federal Planning Policies. The target will be considered as 5 percent above or below the employment listed and includes employees in owned and in leased space.

This table targets a reduction in federal employment of 16,300 to 27,000 for Virginia, in contrast to a 4,000 to 35,300 increase for the District of Columbia and a 2,800 to 13,000 decrease for Maryland. If these targets prove true, this will result in very substantial reductions in federal employment in Northern Virginia at the same time as the metro system is being completed.

NCPC should reevaluate their low employment targets for Northern Virginia and Alexandria in light of three locational policies proposed by NCPC to guide the location of federal employment centers:

Transportation Relationships

In the deployment of federal employees special consideration should be given to employment areas in close proximity to metrorail stations.

Local Planning Relationships

The location of federal employment sites should support, to the extent practicable, regional, and local objectives encouraging compact forms of growth and development in order to conserve resources and effect economies.

Employee Services

In relocation and the selection of new federal employment locations, special consideration should be given to the availability of employee services and affordable housing for federal employees and their families on a non-discriminatory basis within a convenient commuting distance.

In areas where there are significant numbers of federal employees, commercial retail and service facilities, including food service, should be available for employee use within a reasonable travel time or walking distance.

NCPC needs to recognize Alexandria and Northern Virginia's strength with regard to these locational factors, in particular, the City of Alexandria's adopted policy calls for mixed use centers at metro stations with a major employment element.

FISCAL IMPACT: None.

STAFF: Engin Artemel, Director of Planning & Community Development; George Colyer, Chief of Comprehensive Planning.

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004

February 4, 1983

Mr. Robert T. Grow
Senior Planner and Metropolitan
  Clearinghouse Coordinator
Metropolitan Washington Council
  of Governments
1875 Eye Street, N.W.
Suite 200
Washington, D.C. 20006

Dear Mr. Grow:

I have received the copies you forwarded to me of the revised staff comments on the NCPC Federal Facilities and Employment Elements of the Comprehensive Plan which were submitted to and approved by the Transportation Planning Board on January 19, 1983. Chairman Abrams requested that because I had recommended these additions, I should review them and approve them for the Board.

I am satisfied that these additions accurately reflect the proposals which I presented and which were accepted by the Board. My only suggestion at this point, included below, is to more fully identify the resolutions on federal parking policies which are are referred to in the last paragraph on page 12 of the Facilities Element comments.

> "TPB-adopted policies on charging commercial rates to government employees are based on the "Resolution on Federal Parking", adopted December 17, 1975 (TPB R12-75) and further supported by the "Resolution on Assessment of Consistency of the Regional Transportation Plan and Program with State Implementation Plans to Achieve Air Quality", adopted April 19, 1973 (TPB R9-78).

I would appreciate your assistance in seeing that this language is incorporated into the approved staff comments which will be before the COG Board on February 9, 1983. Thank you for your efforts in this matter.

Very sincerely yours,

Barry P. Fogel
Staff Counsel
Committee on Transportation
and Environmental Affairs
Council of the District of Columbia

THE PRINCE GEORGE'S COUNTY GOVERNMENT
(301) 952-3887

County Council
FRANK P. CASULA
Chairman

JAN. 0 4 1983

Mr. Carl F. Henrickson
Chairman, Metropolitan Washington
Council of Governments
1875 Eye Street, N.W.
Washington, D. C. 20006

Dear Chairman Henrickson:

The Prince George's County Council has reviewed the proposed Federal Employment and Federal Facilities elements of NCPC's Comprehensive Plan for the National Capital and wishes to offer the following comments for consideration by COG and NCPC:

I. Federal Employment Element

In general, the goals, objectives, and policies related in the report seem reasonable and appropriate. We question, however, establishing as a policy the "historic" Federal employee distribution of 60% in D.C. and 40% elsewhere in the region. The proposed policy of directing Federal employment to locations outside the central area, which are served by public transit, seems more advantageous from an overall transportation flow perspective. Federal employment concentrations near outlying Metro stations could significantly reduce congestion within D.C. and shorten trip length for Federal employees who reside in suburban areas within the region.

Although important steps have been taken in recent years to alleviate transportation inefficiencies and peak hour travel delays (via such measures as flexible work schedules, ridesharing, and expansion of the Metro system), we saw little or no justification in the report for "targeting" up to 35,000 additional employees in the D.C. central employment area.

II. Federal Facilities Element

A. We support the policy calling for discontinuance of National Airport as a commercial airport, or, alternatively, endorse a significant reduction in its usage. Air travel must be viewed in a Baltimore-Washington regional perspective, with Dulles and BWI

County Administration Building — Upper Marlboro, Maryland 20772

airports accommodating a greater proportion of the region's air passengers. We also endorse the proposal that a thorough analysis of National Airport's future use be undertaken before any major rebuilding of that airport occurs.

B. In conjunction with the proposed discontinuance of National Airport, we note that NCPC proposes construction of a replacement airport somewhere in the region. Although the report indicates that a Prince George's County location would be only 20-25 miles from the heart of the city, our first reaction is that such a proposal is totally infeasible in light of probable community and transportation system impacts and likely public opposition. We recognize that a commercial airport can provide important benefits such as stimulating economic development, but want the record to show our firm opposition to the proposal at this time.

C. Suitland Parkway and Baltimore-Washington Parkway are in need of significant improvement. Accordingly, we support retention of the parkway character of these facilities, but urge that prompt consideration be given to safety-oriented improvements to the interchanges of the B/W Parkway, and to completion of the Suitland Parkway as a four-lane facility. We also believe that the National Park Service should retain jurisdiction over both roadways.

We appreciate having the opportunity to present these comments for your consideration.

Sincerely,

Frank P. Casula
Frank P. Casula
Chairman

cc: Mrs. Helen M. Scharf, Chairman, NCPC
Parris N. Glendening, County Executive
Charles A. Dukes, Jr., Chairman, M-NCPPC
Lowell K. Bridwell, Secretary, MDOT

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE COUNTY BOARD
Court House
Arlington Virginia 22201

JEAN C. JULIAN
CLERK TO THE COUNTY BOARD
PHONE 558-2261

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December 15, 1982

NCPC

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Ms. Helen M. Scharf, Chairman
National Capital Planning Commission
1325 G Street, N.W.
Washington, D.C. 20576

Dear Ms. Scharf:

The Arlington County Board appreciates the opportunity to comment on the proposed elements of the Comprehensive Plan for the National Capital: Federal Employment and Federal Facilities. In general, the County Board is supportive of the recommended policies which are consistent with the National Capital Planning Commission goals for employment and commends the Commission in its efforts to provide a framework for planning Federal activities in the region. In particular, the County Board supports the optimum utilization of existing Federal office buildings, consolidation of small scattered Federal facilities, and the use of combined public and private developments of mixed uses, particularly at Metro station locations. However, two of the proposed policies are of concern to Arlington County and, as worded in the proposed documents, are opposed by the Arlington County Board. Specifically, the Board opposes the proposed policy of closing National Airport and the proposed policy of relocating existing major Federally leased office facilities out of Arlington County.

The National Capital Planning Commission adopted as the employment goal for the Federal Government the deployment of "the Federal work force in a manner that enhances the efficiency and productivity of Federal agencies and strengthens economic development and expands employment opportunities in the National Capital Region". The Comprehensive Plan states that this is to be accomplished by coordinating both Federally owned and leased employment locations with the development policies and objectives of local agencies within the region, and by encouraging Federal employment concentrations that are compatible with local planning objectives and are served by Metro rail and other forms of public transit. It does not appear that the closing of National Airport or the relocating of major Federal leased space out of Arlington are in keeping with the employment goal.

Consistent with previous discussions, Arlington continues to oppose the closing of National Airport. The existing facility provides locational advantages to a major development corridor in Arlington County, both in terms of easy access to transportation facilities, and to hotel and office users. The proposed closing would appear to be at odds with some of the other proposed policies, particularly the locational criteria identified for Federally leased space and energy conservation which could be obtained with the proximity of Metro rail facilities.

The Environmental Assessment on Federal Employment and Federal Facilities sets out clearly the present and projected levels of air traffic at the three area airports and it is Arlington County's view that this evidence argues strongly for a continued major role for National Airport. With this in mind, the County Board takes strong opposition to the recommendations on Civil Air Facilities which would minimize capital improvements and new construction to those which are considered "temporary" (amortized within 15 years) and bar altogether roadway improvements such as widening or increasing potential roadway capacity to serve the airport. These recommendations ignore other statements in the report which indicate that the "terminal facilities are desperately in need of upgrading" and "a second class, make-shift air terminal to serve the Nation's capital is unacceptable".

The Board also finds the documents deficient in failing to offer any adequate justification for the recommendation to close National Airport and providing no analysis of the environmental consequences of doing so for Arlington County or the region. Similarly, there is only limited consideration and almost casual dismissal of the economic consequences to the County and the region.

The proposed policies for relocating and consolidating leased office space for users of less than 100,000 square feet at scattered sites is reasonable, however, the relocation of major office space users (more than 100,000 square feet) is of considerable concern to the County. While Arlington supports the consolidation of activities, the introduction of large blocks of vacant office space resulting from the relocation of such Federal facilities as the Navy Department in Crystal City and the Patent Office could have a significant adverse impact on the office rental market in Arlington. Also, it could be anticipated that numerous private firms associated with these operations would also relocate and create additional vacant office space. It seems clear from conversations between our staff and yours that the relocation of the Navy Department facilities out of Crystal City is contemplated. Again, this appears to work contrary to several locational policies stated throughout the document. Furthermore, it is not clear from the documents what other Federal facilities in Arlington would be affected. This information would be helpful to the Board in further considerations of the proposed elements and we request that your staff provide additional information in this regard.

It is our hope that the Commission will give serious consideration to Arlington's concerns and that a mutually acceptable position can be reached prior to any action on the proposed elements. We look forward to further discussions of this matter with your Commission. Thank you again for the opportunity to comment on the proposed elements of the Comprehensive Plan for the National Capital.

Sincerely,

Steve Detwiler

Stephen H. Detwiler
Chairman

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
4100 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

December 15, 1982

OFFICE OF THE COUNTY EXECUTIVE

Mr. Reginald W. Griffith
Executive Director
National Capital Planning Commission
1325 G Street, N. W.
Washington, D. C. 20576

Dear Mr. Griffith:

Fairfax County has completed its review of the Comprehensive Plan for the National Capital: Proposed Federal Facilities Element and Proposed Federal Employment Element. Overall, we found these elements a progressive approach to planning and managing the Federal presence in the region. The degree of emphasis placed on local planning prerogatives should ensure a high degree of compatibility between Federal and local interests.

There are three specific areas in the Proposed Federal Facilities Element where we would suggest changes. In order to recognize the impact of U. S. Postal Service Facilities on local development, two changes are proposed. On page 14, under Special Service Training and Support Facilities, (a) U. S. Postal Service Facilities, we would add a new point:

> "(3) in areas that will not be unduly impacted by the high levels of traffic generated by these facilities."

and on page 24, Federal Parking Policies, a new sentence to read:

> "At U. S. Postal Service Facilities and other Federal facilities that provide direct services to the public, parking should be provided and managed at a level consistent with local ordinances for private development of a similar nature."

On page 2 of the Implementation Proposals, point 8 deals with the control of land uses around the entrances to Dulles Airport by means of an agreement between the Federal Aviation Administration (FAA) and Fairfax County. The legality of an agreement that would effectively limit private ownership rights is questionable. We believe a more reasonable approach for these entrance areas would be to invite Federal interest review and comment on our Comprehensive Plan for these areas through the recently adopted "Principles and Process for Identifying Federal Interests in the National Capital Region."

A minor point to be noted in the Environmental Assessment is on page 17. The Lower Potomac Sewage Treatment Plant is shown as being operated by the Fairfax County Water Authority instead of the Fairfax County Department of Public Works.

Thank you for this opportunity to comment on two proposed elements of the Comprehensive Plan for the National Capital. We look forward to reviewing other Plan elements as they become available.

Sincerely,

D. U. Kent

Denton U. Kent, Deputy County Executive
for Planning and Development

cc: Mr. Walter A. Scheiber, Executive Director
Metropolitan Washington Council of Governments

MARYLAND
DEPARTMENT OF STATE PLANNING
301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201-2365

HARRY HUGHES
GOVERNOR

CONSTANCE LIEDER
SECRETARY

OK

December 14, 1982

Ms. Helen M. Scharf
National Capital Planning Commission
1325 G Street, N.W.
Washington, D.C. 20576

SUBJECT: PROJECT NOTIFICATION AND REVIEW

Applicant: National Capital Planning Commission

Project: Federal Employment & Federal Facilities Elements of the Comprehensive Plan for National Capital

State Clearinghouse Control Number: 83-11-89

Dear Ms. Scharf:

The State Clearinghouse has reviewed the above elements of the Comprehensive Plan. Acting under Article 88C of the Annotated Code of Maryland and Federal Executive Order 12372, the State Clearinghouse received comments from the following:

Department of Natural Resources, Department of Economic and Community Development including their Historical Trust section, Office of Environmental Programs, Department of Transportation, Department of Human Resources and our staff noted that the elements of the Comprehensive Plan are not inconsistent with their plans and programs. The Department of Natural Resources advised (copy attached) that if any project falls within the 100 year flood plain of the waters of State, the Water Resources Administration should be contacted for permits.

As a result of the review, it has been determined that the elements of the Comprehensive Plan are not inconsistent with State plans, programs, and objectives as of this date.

Sincerely,

F. B. Gatch
F. Bryan Gatch
Acting Director, State Clearinghouse

cc: Lowell Frederick/Clyde Pyers/Herbert Sachs/Max Eisenberg/Walter Scheiber/
Richard Tustian/Thomas Countee/John Downs/Jeff Bresee/

FBG:SB:pm

27069 CAO

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

COG #22

A-95 METROPOLITAN CLEARINGHOUSE MEMORANDUM

TO:
MR. KENNETH V. DUNCAN
CHIEF ADMINISTRATIVE OFFICER
PRINCE GEORGE'S COUNTY
COUNTY ADMINISTRATION BUILDING
14741 GOV. ODEN BOWIE DRIVE
UPPER MARLBORO, MARYLAND 20870

DATE: November 3, 1982

SUBJECT: PROJECT NOTIFICATION AND REVIEW FOR

PROJECT: COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL - PROPOSED FEDERAL FACILITIES ELEMENT

COG NO.: 83-04-005

APPLICANT: NATIONAL CAPITAL PLANNING COMMISSION

The project title, COG number, and applicant's name should be used in all correspondence with COG concerning this project. Correspondence should be addressed to Mr. Walter A. Scheiber, Executive Director. The staff may be reached by telephone at 223-6800.

PROJECT NOTIFICATION

☐ The above item was received on ______________________ and has been referred to appropriate local governmental agencies for their review and comment. This review will be conducted as expeditiously as possible.

☒ A copy of the above item is enclosed for your review and comment, in accordance with OMB Circular A-95 requirements. Your review should focus on this item's compatibility with the plans, programs and objectives of your organization. You may indicate your interest in or comments concerning this item by returning this sheet to the Metropolitan Clearinghouse by 11/26/82.

RESPONSE TO CLEARINGHOUSE

☐ We do not wish to comment on the above item.

☐ We have reviewed the above item, find it in conformance with local plans, programs and objectives, and recommend a favorable Metropolitan Clearinghouse review.

☑ We are interested in the above item and wish to make the following comments: (Use attachment)

☐ We desire an extension of time until ______________ for further consideration of this item (subject to certain restraints imposed by the OMB Circular).

☐ We have further interest and/or questions concerning the above item and wish the Clearinghouse to set up a conference with the applicant.

Signature Kenneth V. Duncan
Chief Administrative Officer

Organization PRINCE GEORGE'S COUNTY

THE PRINCE GEORGE'S COUNTY GOVERNMENT

DEC [illegible] 2

Ms. Helen M. Scharf, Chairman
National Capital Planning Commission
Washington, D.C. 20576

Re: CP01/1257 and 2206

Dear Ms. Scharf:

Enclosed are the comments of this Office on the Federal Employment and Federal Facilities Elements of the Comprehensive Plan for the National Capital. The attached comments have also been submitted to the Metropolitan Washington Council of Governments A-95 Clearinghouse.

Sincerely,

Kenneth V. Duncan
Chief Administrative Officer

cc: Burton W. Oliver
Kenneth H. Collins
Warren S. Rosenthal

COMMENTS OF PRINCE GEORGE'S COUNTY, MARYLAND REGARDING PROPOSED FEDERAL EMPLOYMENT AND FACILITIES ELEMENTS OF COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL

Concerns

1. The projected number of federal employees in the National Capital region is expected to grow only moderately or even decline over the next twenty years. However, defense spending in the region can be expected to increase dramatically in the near term generating a corresponding need for existing facility expansion or new development. With many existing defense-related installations, and a large inventory of vacant space at locations readily accessible to the Capital area via highways with excess capacity, it is reasonable to assume that Prince George's County could be the recipient of a large proportion of the projected growth in employment in this sector. Such growth, particularly that involving research and development functions, is encouraged providing that necessary coordination has taken place with local officials to assure accommodation without adverse impact on existing facilities, environmental conditions and the social context.

2. A significant constraint causing local concern is the extent of developable land even now significantly affected by aircraft noise and air pollution from aircraft operations. Any proposal to expand Andrews Air Force Base operations must be carefully considered within the context of existing and proposed land development, particularly that involving residential development within critical A.I.C.U.Z. Zones.

3. No mention is made of the Goddard Space Flight Center, even though it is expected that the space shuttle will increasingly be used for military applications. Expansion of Goddard should be considered and the County advised regarding any potential impact on local facilities which should be considered at an early date.

4. We are especially concerned, as emphasized in prior comments, about the policy of reducing space leased by the federal government from the present 17.5 percent. Leasing provides locational flexibility which is not possible with owned space--an advantage which is underscored in the Reports. This County presently has ready for immediate occupancy space in a number of business parks which is adaptable to a wide variety of federal uses. Virtually all of these are at locations readily accessible to the National Capital via highways which have excess capacity and allow substantial reductions in travel time to most points in central Washington, D.C. when compared to other locations within the region. Utilization of such space should be considered within the context of a policy of assuring fair and equitable distribution of Federal employment within all local jurisdictions throughout the region.

5. Due to fiscal constraints, the County government is limited in its ability to modify or construct facilities to accommodate development at new locations. We would strongly urge that the County's inventory of space, immediately available for use, be brought to the attention of interested federal agencies. For this, we have enclosed an inventory of currently available office space. If there are any questions in this regard, please contact Mr. George Smith at 952-3400.

6. In discussing the possible option of accommodating future air traffic in the Washington Metropolitan area, the plan suggests that National Airport be phased out in the next 15 - 20 years and a new airport constructed, possibly in northern Prince George's County. It has been our position that the volume of commercial aviation traffic at Washington National be reduced, with the balance proportioned between Dulles and Baltimore-Washington International Airports in view of their current capabilities to handle increased volumes of flights safely and efficiently.

7. The federal agencies should be aware of the regional water supply compact recently completed by the region's major water supply utilities. In addition, a regional feasibility study on the Blue Plains Sewage Treatment Plant is being conducted to determine its ability to meet existing effluent requirements and to explore the possibility of expanding the plant's treatment capacity.

8. It is noted that the Environmental Amendment Section of the Report uses 1979 data to determine impact on water supply. We recommend that the data be updated to include the most recent information available.

9. The federal agencies should be aware of the County's policy that requires County government approval of sewage treatment capacity utilization by new federal facilities locating in the County.

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

COG #22

A-95 METROPOLITAN CLEARINGHOUSE MEMORANDUM

TO:
MS NANCY M KING
GRANTS COORDINATOR
MONTGOMERY COUNTY
OMB 13TH FL
THE EXECUTIVE OFFICE BUILDING
101 MONROE ST
ROCKVILLE, MARYLAND 20850

DATE: November 3, 1982

SUBJECT: PROJECT NOTIFICATION AND REVIEW FOR

PROJECT: COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL - PROPOSED FEDERAL FACILITIES ELEMENT

COG NO.: 83-04-005

APPLICANT: NATIONAL CAPITAL PLANNING COMMISSION

The project title, COG number, and applicant's name should be used in all correspondence with COG concerning this project. Correspondence should be addressed to Mr. Walter A. Scheiber, Executive Director. The staff may be reached by telephone at 223-6800.

PROJECT NOTIFICATION

☐ The above item was received on ____________________ and has been referred to appropriate local governmental agencies for their review and comment. This review will be conducted as expeditiously as possible.

☒ A copy of the above item is enclosed for your review and comment, in accordance with OMB Circular A-95 requirements. Your review should focus on this item's compatibility with the plans, programs and objectives of your organization. You may indicate your interest in or comments concerning this item by returning this sheet to the Metropolitan Clearinghouse by 11/26/82.

RESPONSE TO CLEARINGHOUSE

☐ We do not wish to comment on the above item.

☒ We have reviewed the above item, find it in conformance with local plans, programs and objectives, and recommend a favorable Metropolitan Clearinghouse review.

☐ We are interested in the above item and wish to make the following comments: (Use attachment)

☐ We desire an extension of time until ____________ for further consideration of this item (subject to certain restraints imposed by the OMB Circular).

☐ We have further interest and/or questions concerning the above item and wish the Clearinghouse to set up a conference with the applicant.

Signature ____________________

Organization Montgomery County Government

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

COG #22

A-95 METROPOLITAN CLEARINGHOUSE MEMORANDUM

TO: MR. LARRY N. BLICK
CITY MANAGER
CITY OF ROCKVILLE
CITY HALL
MARYLAND AVE. AT VINSON STREET
ROCKVILLE, MARYLAND 20850

DATE: November 3, 1982

NOV. 8 - 1982

SUBJECT: PROJECT NOTIFICATION AND REVIEW FOR

PROJECT: COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL - PROPOSED FEDERAL FACILITIES ELEMENT

COG NO.: 83-04-005

APPLICANT: NATIONAL CAPITAL PLANNING COMMISSION

The project title, COG number, and applicant's name should be used in all correspondence with COG concerning this project. Correspondance should be addressed to Mr. Walter A. Scheiber, Executive Director. The staff may be reached by telephone at 223-6800.

PROJECT NOTIFICATION

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RESPONSE TO CLEARINGHOUSE

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☒ We have reviewed the above item, find it in conformance with local plans, programs and objectives, and recommend a favorable Metropolitan Clearinghouse review.

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☐ We desire an extension of time until ____________ for further consideration of this item (subject to certain restraints imposed by the OMB Circular).

☐ We have further interest and/or questions concerning the above item and wish the Clearinghouse to set up a conference with the applicant.

Signature Larry N Blick Larry N. Blick, City Manager

Organization City of Rockville, Maryland

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

COG #22

A-95 METROPOLITAN CLEARINGHOUSE MEMORANDUM

TO: MR. G. CHARLES MOORE
CITY MANAGER
CITY OF BOWIE
CITY HALL
2614 KENHILL DRIVE
BOWIE, MD. 20715

DATE: November 3, 1982

SUBJECT: PROJECT NOTIFICATION AND REVIEW FOR

PROJECT: COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL - PROPOSED FEDERAL FACILITIES ELEMENT

COG NO.: 83-04-005

APPLICANT: NATIONAL CAPITAL PLANNING COMMISSION

The project title, COG number, and applicant's name should be used in all correspondence with COG concerning this project. Correspondence should be addressed to Mr. Walter A. Scheiber, Executive Director. The staff may be reached by telephone at 223-6800.

PROJECT NOTIFICATION

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RESPONSE TO CLEARINGHOUSE

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☐ We have further interest and/or questions concerning the above item and wish the Clearinghouse to set up a conference with the applicant.

Signature Edith Maylack, City Clerk

Organization City of Bowie

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

COG #22

A-95 METROPOLITAN CLEARINGHOUSE MEMORANDUM

DATE: November 3, 1982

TO: MR. JAMES K. GIESE
CITY MANAGER
CITY OF GREENBELT
25 CRESCENT ROAD
GREENBELT, MARYLAND 20770

SUBJECT: PROJECT NOTIFICATION AND REVIEW FOR

PROJECT: COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL - PROPOSED FEDERAL FACILITIES ELEMENT

COG NO.: 83-04-005

APPLICANT: NATIONAL CAPITAL PLANNING COMMISSION

The project title, COG number, and applicant's name should be used in all correspondence with COG concerning this project. Correspondence should be addressed to Mr. Walter A. Scheiber, Executive Director. The staff may be reached by telephone at 223-6800.

PROJECT NOTIFICATION

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RESPONSE TO CLEARINGHOUSE

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☐ We have further interest and/or questions concerning the above item and wish the Clearinghouse to set up a conference with the applicant.

Signature ______________________________

Organization [illegible]

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

82 [illegible] 23 [illegible]

NOV 8 1982
932
COUNTY ADMINISTRATOR'S OFFICE

COG #22

A-95 METROPOLITAN CLEARINGHOUSE MEMORANDUM

TO: MR. PHILIP A. BOLEN
COUNTY ADMINISTRATOR
LOUDOUN COUNTY
18 NORTH KING STREET
LEESBURG, VIRGINIA 22075

DATE: November 3, 1982

SUBJECT: PROJECT NOTIFICATION AND REVIEW FOR

PROJECT: COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL - PROPOSED FEDERAL FACILITIES ELEMENT

COG NO.: 83-04-005

APPLICANT: NATIONAL CAPITAL PLANNING COMMISSION

The project title, COG number, and applicant's name should be used in all correspondence with COG concerning this project. Correspondence should be addressed to Mr. Walter A. Scheiber, Executive Director. The staff may be reached by telephone at 223-6800.

PROJECT NOTIFICATION

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RESPONSE TO CLEARINGHOUSE

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☐ We have further interest and/or questions concerning the above item and wish the Clearinghouse to set up a conference with the applicant.

Signature ______________

Organization ______________

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

COG #22

A-95 METROPOLITAN CLEARINGHOUSE MEMORANDUM

TO: MR EDWARD A WYATT
CITY MANAGER
CITY OF FAIRFAX
CITY HALL
10455 ARMSTRONG ST
FAIRFAX, VA. 22030

DATE: November 3, 1982

SUBJECT: PROJECT NOTIFICATION AND REVIEW FOR

PROJECT: COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL - PROPOSED FEDERAL FACILITIES ELEMENT

COG NO.: 83-04-005

APPLICANT: NATIONAL CAPITAL PLANNING COMMISSION

The project title, COG number, and applicant's name should be used in all correspondence with COG concerning this project. Correspondence should be addressed to Mr. Walter A. Scheiber, Executive Director. The staff may be reached by telephone at 223-6800.

PROJECT NOTIFICATION

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RESPONSE TO CLEARINGHOUSE

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☐ We have reviewed the above item, find it in conformance with local plans, programs and objectives, and recommend a favorable Metropolitan Clearinghouse review.

☐ We are interested in the above item and wish to make the following comments: (Use attachment)

☐ We desire an extension of time until ____________ for further consideration of this item (subject to certain restraints imposed by the OMB Circular).

☐ We have further interest and/or questions concerning the above item and wish the Clearinghouse to set up a conference with the applicant.

Signature Jon [illegible]

Organization City of Fairfax

Planning Director Rcd 11/8/82

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

COG #22

A-95 METROPOLITAN CLEARINGHOUSE MEMORANDUM

TO: MR. HARRY E. WELLS
CITY MANAGER
CITY OF FALLS CHURCH
CITY HALL
300 PARK AVENUE
FALLS CHURCH, VA. 22046

DATE: November 3, 1982

PLANNING
NOV 8 1982
ACTION BY ______ C.A. ______

SUBJECT: PROJECT NOTIFICATION AND REVIEW FOR

PROJECT: COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL - PROPOSED FEDERAL FACILITIES ELEMENT

COG NO.: 83-04-005

APPLICANT: NATIONAL CAPITAL PLANNING COMMISSION

The project title, COG number, and applicant's name should be used in all correspondence with COG concerning this project. Correspondence should be addressed to Mr. Walter A. Scheiber, Executive Director. The staff may be reached by telephone at 223-6800.

PROJECT NOTIFICATION

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RESPONSE TO CLEARINGHOUSE

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☐ We have reviewed the above item, find it in conformance with local plans, programs and objectives, and recommend a favorable Metropolitan Clearinghouse review.

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☐ We have further interest and/or questions concerning the above item and wish the Clearinghouse to set up a conference with the applicant.

Signature Henry G. Bibber, Planning Director
Organization Falls Church, Va.

metropolitan washington
COUNCIL OF GOVERNMENTS
1875 Eye Street, N.W., Suite 200, Washington, D.C. 20006 223-6800

February 9, 1983

METROPOLITAN CLEARINGHOUSE REVIEW COMMENTS

COG PROJECT NO.: 83-04-005

PROJECT NAME: Comprehensive Plan for the National Capital Proposed Federal Facilities Element

APPLICANT: National Capital Planning Commission

PROJECT DESCRIPTION: (Background and Summary)

This document establishes criteria for the location of Federal facilities in the National Capital Region and planning policies to guide their development. The document may be generally divided into five sections, background and issues, goals and objectives, locational criteria, policies, and implementation proposals. Detailed background and analysis is included in a companion report entitled Federal Employment and Federal Facilities - Planning Report and Environmental Assessment.

The purpose of this element is to identify for Federal, Disrict of Columbia, and other governmental authorities, non-governmental agencies and groups, and the public, planning policies relating to Federal Facilities in the National Capital and to provide guidance to:

(a) the Commission in its review of Federal agency plans and programs in the Region;

(b) the Commission in its Federal interest review of District elements of the Comprehensive Plan;

(c) Federal agencies in their planning of Federal Facilities;

(d) local, regional, and state agencies in the preparation of their plans and programs in the Region which may affect Federal interests or functions of the Federal Establishment in the National Capital and the Commission in its Federal interest review of such plans and other public and private proposals.

(e) professional, business, special interest and community groups, and individuals that provide services, relate to, or have an interest in the activities of the Federal government.

The Federal Employment and Federal Facilities elements are very closely related. The Federal Facilities element identifies criteria for the location of Federal Facilities in the Region and planning policies to direct their development. The Federal Employment element identifies planning policies for the deployment of Federal employees and planning targets for employment levels at major Federal employment areas in the Year 2000. Together these two elements provide basic planning guidelines for the Federal Establishment in the Region.

The Federal Employment element reviewed five scenarios for future Federal employment changes in the Region. As a result of the scenario analysis, two forecasts of future employment levels were selected for planning purposes. The two forecasts range from a loss of 43,800 or a modest increase of 6,400 civilian employees over 1980 by the Year 2000. This analysis also indicated that the forecasts of future employment can be accommodated at existing Federal installations with a significant reduction in the amount of space leased by the Federal government. Using these forecasts and other information as a basis for planning purposes, the proposed element includes the following key items:

- Since 1950 Federal Leasing has become a major factor in influencing the geographic distribution of Federal space and employment in the region. Current GSA and DOD planning would reverse this trend through new Federal office building construction to house many of the Federal employees presently in leased space and through more efficient use of existing space.

  The number of employees in space leased by GSA has increased tenfold in the last three decades. In 1950, 7 percent, or 12,700 of the assigned employees were in GSA - controlled leased space. During the next 28 years, this increased to 47 percent or 125,700 employees. It appears that these trends will change. Significant reductions in the number of employees housed in leased space should be accomplished not only through more efficient use of owned space but also through more Federal construction and possible purchase of private buildings.

- The Federal government should house as many of its employees as possible in Federal buildings, rather than in leased office space. Studies by GSA and other agencies have concluded that it is more beneficial to the government in most cases to house its employees in space that it owns. There are several reasons for this including the need for specialized space for government activities; the desirability of permanent space for the Federal workforce that reflects the stability of national government and servces as a source of national pride; and the realization of the long term economies of ownership and cost effective operation.

  The forecasts of decline or very modest growth of Federal employment in the Region over the next two decades coupled with more efficient use of existing space, point to a reduction in the amount of space leased. While the proportion of Federal employment assigned to leased space is now about 30 percent, the objective should be to reduce this so that approximately 20 percent of Federal employees in the Region are in leased space.

- The future of National Airport is a major is- sue. In 1981, the three civilian airports serving the Baltimore-Washington Bi-Region served 20.3 million passengers; National Airport served 14.2 million, Dulles Airport served 2.3 million, and Baltimore-Washington Airport served 3.8 million. Dulles is not being utilized as planned, National is congested.

- Before any major rebuilding of National Airport is begun, a thorough analysis of its future use should be made. Urban development in a metropolitan center of three million people and the environmental constraints of the location has virtually rendered the National Airport site an inappropriate and obsolete location for a major commercial airport.

Included in the proposal are a number of Federal Planning and Transportation Policies. The following polices are included:

- Approximately 20 percent of the total Federal employment in the region should be accommodated in leased space to provide for emergency or temporary requirements of federal agencies, flexibility for dealing with new requirements and program changes, and Federal activities which do not warrant the provision of a public building.

- Washington National Airport should be discontinued as a commercial airport at the earliest practical time and all air carrier operations should be removed to other new and/or existing airports in the Baltimore-Washington Bi-Region in order to reduce the adverse environmental and other impacts on the Nation's Capital. Studies of the future use of the airport should be undertaken as soon as possible.

- Dulles International Airport should serve all levels of airline service to and from the Washington area and, with Baltimore-Washington International Airport, provide all international air service to the National Capital to maximize the potential and planned capacity at these airports.

RELATIONSHIP TO THE METROPOLITAN PLANNING PROCESS -- STAFF COMMENTS

POLICY OVERVIEW

The Council of Governments received the proposed Federal Employment and Federal Facilities Elements of the Comprehensive Plan for the National Capital with the period of review of these important elements concluding at the end of December. The A-95 review format is used to initiate an evaluation and a discussion of the long-range effects of these proposals which bear on matters of fundamental developmental interests to the local governments and regional plans in this area. Local and regional comments on these proposed elements are designed to identify fundamental issues which may require negotiation and accommodation among the parties to fulfill the objectives of the Metropolitan Policy Guide and of the plans and policies of the region's local governments. We envision these comments to be the initial stage of securing plan components among the National Capital Planning Commission, the Council of Governments and the state and local governments of the metropolitan region consistent with the recently adopted COG/NCPC document "Principles and Process for Identifying Federal Interests in the National Capital Region."

Should this process lead to a fundamental inconsistency among Federal and local government development planning objectives, this event would result in a statement by the Federal Agency as to why it must deviate from the objectives of local and regional plans to satisfy the Federal interest. We expect this to be the beginning of a deliberative process with an adequate period of time to come to a mutually satisfactory resolution of any potential policy conflicts.

A. GENERAL METROPOLITAN DEVELOPMENT

- Proposed policy number 2 on page 22 of the Facilites Element states that "National Airport should be discontinued as a commercial airport at the earliest practical time..."The closing of National Airport was informally proposed by the National Capital Planning Commission (NCPC) prior to initiation of significant aviation planning processes in the mid-1970's by the State of Maryland, the Commonwealth of Virginia, and the Council of Governments (COG) and its Transportation Planning Board (TPB). In 1975 COG/TPB evaluated approximately 20 differing theoretical future airport systems to establish a broad spectrum representing highly restrictive to highly expansionary airport policies and was documented in the publication The Future of Washington's Airports (December, 1975).

  One alternative considered during the initial phase of the regional air transportation system planning process in 1975 was to close National Airport to commercial aviation. This alternative was not retained.

  The "preferred alternative" recommended by COG/TPB specifically included the continued use of National Airport as a commercial aviation facility, albeit with limits placed on its future growth.

  Subsequent to the development of the Future of Washington's Airports the COG Board has recognized and provided for the continued use of National Airport with the provision of passenger limits. The continued use of National is provided for in the Metropolitan Policy Guide.

  In view of the longstanding endorsement of National Airport, it is strongly recommended that the proposed NCPC policy regarding the discontinuance of National Airport be deleted and replaced by a policy recognizing continued use with passenger limits.

- Leased Space Policy number 3 on p.17 and implementation proposals on leased space regarding review of Federal leasing of office space are desirable from both the local and regional perspective, and are consistent with and support the Metropolitan Policy Guide's Economic Development Policies including the policies of COG Board Resolution R8-81 of April 8, 1981 regarding the distribution, acquisition, leasing and construction of space for Federal government functions. Implementation of this policy and proposal would serve to increase the accountability of the Federal Government for its impact on the region's economy and would improve local participation in Federal employment, location and property leasing decisions.

  NCPC is encouraged to pursue this review activity with the General Services Administration or other Federal agencies and in turn participate with COG in review and comment on Federal leasing as it impacts the Washington Metropolitan Area under the COG/NCPC "Joint Resolution" and future A-95 review procedures.

- Given the substantial impact of Federal actions in the region, NCPC should examine not only Federal cost savings but also local economic impacts when establishing Federal employment targets or changes in location or use of Federal employment targets or changes in location or use of Federal facilities. A study of such impacts should address the timed phasing of employee and facilities build-up or movement on the local economy and existing infrastructure. A suggested threshold for analysis would be for the contemplated relocation of office space in excess of 100,000 sq. ft.

- It is suggested that the General Policies on p.16 which provide a framework for Federal facilities planning make clear reference to the policies included in the NCPC goals statement "Intergovernmental Cooperation and Public Participation" as the recognition and maintenance of local/regional/Federal cooperation and consultation are of key concern.

- COG policy 2(c) contained in COG Board Resolution R8-81 states that the Federal government should locate space in centers and other planned areas through leasing in order to preserve valuable commercial property and tax revenues to local governments. In addition, the policy states that if location is made by means other than leasing (i.e. purchase of property) then the local government should be compensated by payment in lieu of taxes that would be generated by a lease agreement. It is suggested that an additional policy be added on p.17 including the COG position regarding payment in lieu of taxes at such time that implementing federal legislation provides for such compensation.

- The Background and Issues Sections and the Planning Report associated with the Facilities Element describe the amount of space owned and leased by the Federal Government. Developing policies pertaining to leasing, construction and acquisition of future space based on the above data may warrant re-examination as comparison of total owned to total leased space may not be directly comparable. Using total owned space includes facilities such as courthouses, museums, park service facilities and other monumental facilities which are not the type of structures the Federal Government would acquire through leasing. In view of the above it is recommended that the Facilities Element provide information on how this data may be utilized along with employment information to set policy pertaining to leasing, construction and acquisition of future space needs. The Element should highlight the significance of using employment as the key factor for setting policy rather than space. This is important due to the fact that employment information is more accurate, available and comparable than information on common or similar use space.

- Parking standards should be approached on a case by case basis investigating the use of each Federal facility as well as the facilities site characteristics and location (p.24, policy no. 4).

- Implementation Proposal number 8 regarding Federal Agency Plans states that:
    - The FAA should negotiate, in conjunction with Master Plan preparation, agreements between FAA and Fairfax and Loudoun Counties relative to appropriate private development surrounding Dulles Airport and have these agreements incorporated in local plans and

regulations, as necessary. Proposed development around Dulles - particularly in and around the entrances to the airport - should be submitted for review to the Commission and to FAA to identify potential impacts or traffic congestion that would adversely affect access to the airport.

This proposal should be carried out consistent with the local/Federal coordination contained in the COG/NCPC document "Principles and Process for Identifying Federal Interests in the National Capital Region." The consideration of "appropriate private development" surrounding Dulles Airport can be accommodated through the normal process of local Master Plan development and implementation including the FAA's role as a local landowner.

B. TRANSPORTATION

Metropolitan Clearinghouse review comments related to transportation are provided below for each NCPC policy of regional significance:

(1) Washington National Airport should be discontinued as a commercial airport at the earliest practical time and all air carrier operations should be removed to other new and/or existing airports in the Baltimore-Washington Bi-Region in order to reduce the adverse environmental and other impacts on the National's Capital. Studies of the future use of the airport should be undertaken as soon as possible. (p.22 Facilities Element).

Discussion:

In view of the longstanding endorsement of National Airport, it is strongly recommended that the proposed NCPC policy regarding the discontinuance of National Airport be deleted and replaced by a policy recognizing continued use with passenger limits.

The Metropolitan Washington Airports Policy promulgated by the U.S. Department of Transportation, Federal Aviation Administration, in November, 1981, provides for the use of National Airport with passenger limits. COG has suported this policy "as a major step toward a more rational utilization of the region's airports; increasing the use and continued development of Dulles and BWI, and de-emphasizing National as the primary airport facility in the Washington/Baltimore Region."

The Washington-Baltimore Regional Air Passenger Survey recently completed by COG/TPB indicates that while air passenger travel at Dulles and BWI would increase significantly if air passengers in the Washington/ Baltimore Region were to use their preferred airport, almost two-thirds of the air travelers using National preferred it over the other two airports.

The Survey is part of a five vear air transportation system planning program which will produce uptated forecasts of air passenger travel demand during the coming year. The program is being conducted by COG/TPB in cooperation with Maryland, Virginia, the District of Columbia, FAA, and NCPC. Further planning for National, Dulles and BWI Airports should include flexibility to accommodate these forecasts.

Efforts should also continue to improve the environmental and safety conditions at National Airport.

In regard to the word "new" in the NCPC policy above, it should be noted that this word should not be interpreted to mean new primary facilities anywhere in the region.

(2) Development at Dulles Airport should be limited to airport related uses and non-airport uses should be discouraged. (P.23 Facilities Element.)

Discussion:

This policy refers to development on Federally owned airport property. Adequate related service facilities should be provided on this property to support planned future air passenger growth.

(3) Adequate highway and/or parking access should be provided to meet defense needs of military air fields. Suitland Parkway should be retained and enhanced as a scenic route to serve Andrews Air Force Base and as a gateway to the Nation's Capital; its parkway character and quality should be maintained. (P.23 Facilities Element.)

Discussion:

Gateways to the Nation's Capital such as Suitland Parkway are essential not only in serving military and civilian Federal establishments but also accommodating other transportation needs of the region. The Suitland Parkway, for example, may need to take on more responsibility for accommodating radial transportation demands not solely attributed to military and other Federal installations. In any case, the parkway characteristics should be maintained in the future.

(4) In the Central Employment Area, parking ratios should not exceed one space for five employees (1.5). Federal employee parking should be provided only to the extent that employees' needs cannot be served by public transit or commercial parking. Parking requirements will vary by site and should be established by technical analysis of site-characteristics and location. (P.24 Facilities Element.)

(5) At outlying Federal Facilities, parking for Federal employees automobiles should be accommodated on-site to the extent possible. A technical analysis should be made of the site characteristics, location, and available transit service to determine appropriate parking ratios. Employee parking should not exceed the following ratios in the areas indicated on Diagram 4:

(a) In the District of Columbia, Arlington County, the City of Alexandria, and the Silver Spring area of Montgomery County between the Prince George's County Line and 16th Street Extended, south of the Capital Beltway, one space for three employees (1:3);

(b) In Montgomery County south of Routes 28,124, 115 and 198, in Prince George's County inside the Capital Beltway and west of Route 4 and north of Route 223, and Fairfax County and the City of Alexandria inside the Capital Beltway, one space to two employees (1:2); and

(c) In the remainder of the Region, exceed one to one-and-one-half (1:1.5). (P.24 Facilities Element.)

Discussion:

In determining adequate parking for Federal employees in different areas of the region, Staff agrees that "parking requirements will vary by site and should be established by technical analysis of site characteristics and location."

Staff suggests use of a measure of accessibility by public transit to Federal workers (for existing facilities) and accessibility to labor force for proposed new sites in order to establish reasonable parking requirements.

When technical analysis is performed for a candidate site and the results conflict with local zoning ordinances, the more restrictive number of parking spaces should apply. Also, the ratio of 1:5 spaces per employee proposed for the Central Employment Area might be extended to the entire Metropolitan Center. This area is provided with excellent service by public transit; most notably Metrorail.

Finally, the ratio of 1:1.5 for the remainder of the region would provide two spaces for every three employees. This ratio essentially recognizes the complete dominance in commuting of the single occupant automobile. The promotion of ridesharing to the extent of requiring an agency to designate a ridesharing coordinator is strongly encouraged and very appropriate for suburban sites where ridesharing is practicable.

(6)
Federal interoffice employee shuttle services should be operated where there is no public transit service available (p.25 Facilities Element).

The above policy is supported as it encourages high occupancy vehicle usage where no public trnasportation service is available.

(7) Employee shuttle services for connecting Federal sites to the Metrorail system for home-to-work trips should be considered in cases where service is not otherwise provided by public transit and where there is no requirement for local service other than that needed by the Federal Facility (p.25 Facilities Element).

If federal employment sites are not readily accessible to Metrorail and/or metrobus service, then employee shuttle service should be used to access metro for home and work trips. Given the desirability of this approach, it is suggested that the implementation proposal contained on p.3 of the Facilities Element and included below be included as a policy:

> DOT, GSA, DOD, and the Commission should jointly propose legislation to permit Federal agencies to operate shuttle bus service for employees to transit access points where no other such public service is available.

OTHER COMMENTS:

One additional observation deals not with a proposed policy but with an Implementation Proposal of the Element.

The impacts of large Federal installations on the adjacent street network are a concern. Federal responsibility for paying incremental costs for additional access capacity should be no different than what is being requested by local governments of many private developers. These costs should be borne by the Federal agency locating or expanding at the specific employment site. A statement of this position is included as one of the Implementation Proposals (Transportation p.3 number 2). It is recommended that this proposal be included as a specific policy in the Facilities Element.

A second implementation proposal from p.3 and cited below has previously received strong support from the Transportation Planning Board and should be considered as a policy:

> Federal agencies, in planning, constructing, and operating parking facilities at Federal Facilities, should consider establishing a system of user fees, approximating commercial parking rates in the vicinity, to reimburse the cost of construction and operation of parking facilities and as an incentive to efficient management.

TPB adopted policies on charging commercial rates to government employees are based on the "Resolution on Federal Parking" adopted December 17, 1975 (TPB R12-75) and further supported by the "Resolution on Assessment of Consistency of the Regional Transportation Plan and Program with State Implementation Plans to Achieve Air Quality", adopted April 19, 1978 (TPB R9-78). The primary resolution (R12-75) cites a series of concerns related to the current practice of the federal government in providing free or subsidized parking for many of its employees. This federal policy is contrary to regional goals and objectives and to regional transportation planning designed to increase carpooling and use of public mass transit.

STAFF RECOMMENDATION:

Endorse staff comments for transmittal to the National Capital Planning Commission.

COMMITTEE ACTION

- Joint meeting of Planning Directors Technical Advisory Committee (PDTAC) and Land Use Policy Committee (LUPC), December 15, 1982

  Reviewed draft staff comments and requested that revisions be made based on concerns expressed by the Committee.

- Transportation Planning Board (TPB), December 15, 1982

  Reviewed draft staff comments and requested that revisions be made based on concerns expressed by the Board.

- Planning Directors Technical Advisory Committee (PDTAC), January 19, 1983

  The PDTAC reviewed and endorsed the revised draft staff comments presented to the Committee.

- Transportation Planning Board (TPB). January 19, 1983

  The TPB reviewed and endorsed the revised draft staff comments under the condition that additional revisions be made consistent with concerns expressed at the January meeting.

- Land Use Policy Committee (LUPC), January 26, 1983

  The LUPC reviewed and endorsed the revised draft staff comments.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF THE BUDGET
DOVER, DELAWARE 19901

TELEPHONE (302) 736-4205

February 24, 1983

The Honorable Dave Durenberger
Chairman
Intergovernmental Relations Subcommittee
Washington, DC 20510

Dear Senator Durenberger:

In response to your invitation to submit written statements for inclusion in the Subcommittee on Intergovernmental Relations' hearing record, I am pleased to send you the attached on behalf of Delaware's Governor, Pierre S. du Pont.

We appreciate the opportunity to comment on the Intergovernmental Review process.

Sincerely,

Marna C. Whittington

Marna C. Whittington
State Budget Director

MCW:FB:kg
Encl.

cc: The Honorable William V. Roth, Chairman, CGA, (w/Encl.)
The Honorable Pierre S. du Pont, (w/Encl.)

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February 24, 1983

Statement From
The Delaware State Clearinghouse
on Implementation of
Presidential Executive Order 12372,
"Intergovernmental Review
of Federal Programs"

to Senator Dave Durenberger
Chairman of the Subcommittee
on Intergovernmental Relations

BACKGROUND

The State of Delaware has always considered the OMB Circular A-95 coordination and review process as a useful and necessary tool in the development of applications for federal grants and projects. The A-95 review process was taken one step further and in July 1977, the Delaware General Assembly enacted legislation which set up the Delaware State Clearinghouse Committee for Federal Aid Coordination (DSCC). This Committee was made up of the Chairman and Vice Chairman of the Joint Finance Committee of the General Assembly, the Controller General, the State Treasurer (elected official), and four members of the Executive Branch. The Committee reviewed and approved (or disapproved) proposed uses of federal funds from State agencies and State authorities, including the State's higher education institutions. The DSCC also had jurisdiction over the private agencies and local governments whose proposals impacted on the State budget.

In June 1982, the law was amended to:

1. Accommodate the block grant reviews. The DSCC was designated as the Committee to hold public hearings for block grants, as required by federal regulations, for the Delaware Legislature.

2. Implement Presidential Executive Order 12372. The legislation now calls for the involvement of the Chairpersons of Delaware's Legislative Standing Committees in the reviews of plans and applications from State agencies and from private or public entities whose applications might impact on the State Budget. The State Clearinghouse itself provides an information bulletin on all proposals under review at the State Clearinghouse and invites these chairpersons to review and comment on them.

3. Further reinforce the involvement of the Legislature. The DSCC membership was amended to include six members of the Legislature instead of two. The six legislators are all members of the Joint Finance Committee, the Committee which formulates the Budget for the State.

UPDATE

1. The State Clearinghouse contacted elected officials (legislators, mayors, county executives, etc.); explained the present coordination mechanism; asked for recommended changes thereto; attached copies of E.O. 12372; requested input on the implementation of E.O. 12372. Most of the responses we received suggested we keep the present mechanism.

2. The State Clearinghouse has drafted an Executive Order from Governor Pierre S. du Pont giving the Budget Office the responsibility for implementation of Presidential E.O. 12372 and to carry on the coordination of federal grants and projects as in the past.

3. The State of Delaware has only three counties and has no areawide clearinghouse, the State Clearinghouse will remain the government entity responsible for all coordination and implementation of E.O. 12372 for the Governor.

PROPOSED RULES AND REGULATIONS

1. It must be understood that as far as the State of Delaware is concerned, all federal funds coming to the State agencies must be reviewed by the Delaware State Clearinghouse and by the DSCC. This does not include direct payments made by a federal agency to an individual citizen; however, it will includes funds received by a State agency to administer a program whereby a recipient receives a direct payment.

2. In our opinion, the programs listed under the jurisdiction of the Department of Health and Human Services, Federal Register/Vol. 48, No. 16 of Monday, January 24, 1983, Proposed Rules, p. 3147, Section 4. "Financial Transfers for Which HHS has no funding Discretion of Direct Authority to Approve Specific Sites or Projects" should all require close coordination under E.O. 12372. The political entities in a State are very much impacted by the Block Grants and other programs/projects listed therein. The determinant factor should not be the funding mechanism, but rather where the money will go and for what purpose.

3. The State of Delaware has three main concerns:

A. that the federal agencies, at the national and regional levels, will instruct prospective applicants and/or recipients of federal funds to contact the Delaware State Clearinghouse upon intent to apply and/or upon notification of receipt of federal funds. The State Clearinghouse will make the determination whether a project needs intergovernmental review.

B. that federal agencies will consider the comments made and the concerns raised by the State Clearinghouse in their decisions to fund a project and that federal agencies not fund Delaware State agencies prior to receiving Clearinghouse input.

C. that federal agencies not waive the intergovernmental review requirement without due consideration and notification..

Marna C. Whittington

Marna C. Whittington
State Budget Director

Francine Booth.

(Mrs.) Francine Booth
Federal Aid Coordinator

MCW:FB:ksg
0535y

STATE OF CONNECTICUT
OFFICE OF POLICY AND MANAGEMENT
COMPREHENSIVE PLANNING DIVISION

Statement at Public Meeting on Executive Order 12372
by Horace H. Brown, Acting Under Secretary
Comprehensive Planning Division
Office of Policy and Management
State of Connecticut
March 2, 1983

The opportunity to present oral testimony is appreciated. I have chosen to limit my comments primarily to a series of questions concerning general policy issues. It is sincerely hoped that federal agency participants can provide specific response to these questions today since remaining time prior to April 30 is limited and we feel answers are necessary in order to establish the process in Connecticut. My questions are as follows:

1. Regulations appear to be silent or unclear as to who will notify potential applicants of their responsibilities under the state review system. Will information as to the review process and programs covered for the home state of the applicant be included in application instructions distributed by the federal agency? It is inappropriate to assume that state single points of contact will know the identity of all potential applicants for all grant programs and thus advise them of review requirements.

2. Will federal application instructions indicate to potential applicants when they should submit notice of intent to apply for federal financial assistance to the state contact point and length of the review period in that state? The regulations do not appear to cover these matters of timing.

3. It appears that state letters of review certification are to be transmitted to the federal funding agency rather than to the applicant. Is this the case? If so, one wonders how the federal agency will relate the response to the application which it may not have yet received. The A-95 process seemed more logical in that the response went to the applicant which had to include substantive comments with the submittal to the federal agency.

4. It is understood federal regulations will provide for a minimum 30 day review period. Are states allowed their own discretion as to maximum review period? If so, won't this cause problems for federal funding agencies if timing varies widely among the 50 states? In any event, will federal agencies recognize a period of time beyond the initial 30 days during which efforts are made in the states to resolve issues? Will the federal funding agency expect the state to notify it at the end of the minimum 30 day period if there is an issue still being pursued?

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5. Currently an applicant notifies an areawide clearinghouse and the state clearinghouse concurrently. Under the new process does the federal government expect applicants to notify solely the state contact point with the state in turn to refer the notification to an areawide agency which would handle the local review process? If so, it should be recognized that the processing time period will be longer than under the current process due to double mailing not now involved, namely from the applicant to the state, from the state to the areawide and in turn from the areawide back to the state and then to the applicant or federal agency.

6. Apparently proposed regulations allow for federal agency response in matters concerning non-accommodation by phone, in person or in writing. We feel strongly that response always should be in writing regardless of any other additional contact.

7. Is there reason that OMB's list of state plans eligible for notification under EO 12372 does not appear to require review of all federally required state plans? For example, the DOT State Rail Plan is not on the list.

8. Will all federal agencies be required to distribute for review and comment environmental impact statements prepared in accordance with NEPA? Regulations appear silent on this other than for EIS's prepared by EPA.

9. Clarification of extent of consultation with local elected officials is desired. For example, is it sufficient to consult with organizations which represent substantial numbers of municipalities?

10. Obviously the time is relatively limited between now and April 30 and in some ways it has been difficult to develop a detailed process without first seeing the draft federal regulations and more importantly hearing the discussion today. As a result of this it may be necessary to institute an interim process. Can an interim process be established without a state completing the consultation process such as with local elected offiials as called for by OMB?

City of Charleston
Joseph P. Riley, Jr.
Mayor

March 8, 1983

Senator Dave Durenberger, Chairman
Subcommittee on Intergovernmental Relations
United States Senate
Washington, DC 20510

Dear Senator Durenberger:

Thank you very much for giving me the opportunity to offer my observations of the possible local effects of the Executive Order 12372, entitled "Intergovernmental Review of Federal Programs". Local officials in the Charleston area have taken the A-95 process serviously and have made effective use of its review procedures. While there have been some problems, overall I feel the system has been useful and beneficial to our community.

My comments are attached for your review. Please let me know if I can help in any way.

With warmest regards, I remain

Most sincerely yours,

Joseph P. Riley, Jr.
Mayor, City of Charleston

JPR,jr./dm

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All America City
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EXECUTIVE ORDER 12372

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

Thank you for this opportunity to offer my observations of the possible local effects of Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

First of all, I would like to preface my remarks with a general statement regarding the Intergovernmental Review Process. The concept behind this process, as established by the Intergovernmental Cooperation Act, warrants our support. Proposals to improve this system deserve our serious attention.

"Government" is a major influence upon the lives of our individual citizens. This influence comes from Federal, State and Local sources, and the average citizen has a right to expect that each level of government is aware of its impact on the local community. The direct involvement of all these levels of government in the intergovernmental review process is, thus, critical. In order for any level of government to operate with any degree of efficiency, it must be aware of the related activities of other governmental and non-governmental entities.

We feel that the A-95 system works fairly well in South Carolina in promoting communications between governmental entities regarding program proposals. I receive notices of proposed Federally supported activities throughout the Charleston Metropolitan Area. I also have the opportunity to comment upon any of these proposed activities which I feel would have an impact upon the citizens of the City of Charleston. This same process allows me to observe the activities and comments of other local public and private officials. These comments are at times entertaining, at times educational, but each comment expresses a true concern of someone within the Charleston Community. In brief, the system helps me keep informed of activities occurring within our Metropolitan Area and it offers me an opportunity to represent the City of Charleston and comment upon those issues having an effect upon the City. Comments are made to both the State and to the appropriate federal agency evaluating the proposed activity.

The old A-95 process was not without some defects. Specifics of programs proposed were at times lacking. Sometimes we learned that projects had been funded before the A-95 review process was complete, and responses by federal agencies to local comments were often non-existent. These defects provided some validity to criticisms of the A-95 system.

President Reagan's Executive Order to rescind OMB Circular A-95 is viewed with mixed feelings in South Carolina. The State welcomes an expanded role in the decision making process involving Federal activities. The State also supports any requirements that would necessitate federal agency responses to negative State comments upon federally assisted projects.

The State, however, is not very comfortable with the Executive Order because it does not include any consistent principles defining the minimum elements of a State sponsored review program. There is a feeling that some basic elements of a review program should be desirable on a nation-wide basis. It does not appear to be in the best interest of Federal Domestic Assistance Programs to deal with fifty (50) State systems which may differ radically in the review process each elects to establish.

As a local elected official, I am also concerned about the freedom allowed the States in electing to establish an "official" review system. The new regulations require federal agencies to concentrate on an "official State recommendation" received through a State's "official point of contact" concerning proposed projects.

South Carolina is a wonderful State, however, the interests of the City of Charleston, Charleston County or our entire SMSA may not always reflect the "values" of our largely rural State. Local officials must be concerned about the development of "official State recommendations" and the influence their comments have upon the development of those recommendations.

Under the old A-95 system, local comments went to the Federal agency involved with the particular project proposal under consideration. I knew that the federal agency was supposed to receive my comments, now it appears that the State will screen our local comments which may, or may not, be included within an "official State recommendation." All comments originating from local sources may not always be reflected in a State recommendation. If not, what happens to them if the State elects to ignore them?

I believe that a federal agency should want to be informed of all comments made during the intergovernmental review process. The Executive Order does not appear to ensure that they will receive all comments.

The "official State recommendation" provision of the Executive Order is also of some concern to me. This requirement implies that a State which takes an official position on a proposed project can be held accountable as a partner in the decision making process. The "accountability" of States implies to me that each State would want to follow the example of the Federal agencies in the thorough analysis of project proposals. If the states attempt to duplicate the project evaluation processes of federal agencies this concept could encourage a great deal of additional paperwork, delay and other costs to the State and project applicants.

In summary, President Reagan's Executive Order rescinding the A-95 process is an effort to further his New Federalism program by allowing States to have a greater influence upon the implementation of Federal Domestic Programs within their boundaries. I am not confident that the States want all the additional responsibilities or beauracracy that this Executive Order would force on them if they should elect to establish an Intergovernmental Review System.

South Carolina was not entirely displeased with the old A-95 system. The new system seems to encourage a greater bureaucracy at the State and Local levels of review than did the old system where all comments were simply referred to a single agency which was supposed to have the expertise to evaluate the merits of individual comments in a professional manner. This same agency could also be held responsible for its decisions. Now responsibilities will be more diffused as States are also held accountable for an "official recommendation."

The intergovernmental review of federal programs will now be largely dependent upon the willingness of individual states to support a review process. The ability to evaluate program proposals and mediate in-state conflicts will require the expanded use of dwindling State resources.

I am also disappointed that the Executive Order does not ensure that local comments will be made available to Federal funding agencies. The Federal Domestic Assistance Program includes hundreds of programs where units of local government deal directly with Federal agencies. This relationship was established because it was recognized that State and Local values and problems often differ. The President's Executive Order appears to threaten the scope of communications between the Federal-Local levels of our governmental structure.

The President's Executive Order will take effect this April. South Carolina intends to maintain an Intergovernmental Review System which will be based primarily upon the system established in response to the old OMB Circular A-95. I hope that it works well.

I appreciate the opportunity to comment at this time. Hopefully, together we can maintain an effective Intergovernmental Review Program which meets the needs of all levels of government and promotes the efficient use of our tax dollars.

Federal Register
Vol. 47, No. 137
Friday, July 16, 1982

Presidential Documents

Title 3—

The President

Executive Order 12372 of July 14, 1982

Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Sec. 2. To the extent the States in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

HSA's
Title 20
not COG's.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

Ronald Reagan

THE WHITE HOUSE,
July 14, 1982.

[FR Doc. 82-19472
Filed 7-14-82; 3:18 pm]
Billing code 3195-01-M

OFFICE OF COMMUNITY SERVICES
GOVERNOR'S OFFICE
CAPITOL COMPLEX
CARSON CITY, NEVADA
885-4420

MEMORANDUM

Date: March 8, 1983

For: Ms. Ruth Doerflein
Subcommittee on Intergovernmental Relation

From: Linda Ryan

Subject: Implementation of Executive Order 12372

In order to accommodate Presidential Executive Order 12372, the State of Nevada, through the State Office of Community Services, is requesting the following:

1) That all federal agencies publish listings of federally assisted programs and development projects which will, and will not, be subject to review under Executive Order 12372;

2) that such listings from each federal agency be combined in a standardized format;

3) that the March 10th deadline for commenting on federal rules pertinent to Executive Order 12372 be extended 30 days beyond the publication and transmission of these listings to each state's "single point of contact"; and

4) that these listings be available 60 days prior to implementation of Executive Order 12372, which is currently scheduled to take effect April 30, 1983.

LAR/kf
cc: Senator Chic Hecht
Senator Paul Laxalt
Representative Harry Reid
Representative Barbara Vucanovich

WESTPO
Western Governors' Policy Office

Western Governors' Policy Office
3333 Quebec Street
Suite 3000
Denver, Colorado 80207
(303) 399-9957

March 21, 1983

Ms. Ruth Doerflein
Chief Clerk
Subcommittee on Intergovernmental Relations
507 Carroll Arms Building
301 First Street, N.E.
Washington, DC 20510

Dear Ms. Doerflein:

The enclosed material constitutes testimony of the Western Governors' Policy Office (WESTPO) on behalf of its member governors, for the Subcommittee's March 3, 1983 hearing on revision of the A-95 process. It is being submitted for inclusion in the written record of that hearing at the request of Mike Quaranta, staff for the Subcommittee. Ms. Cheryl Hutchinson of Montana Governor Ted Schwinden's office had originally been scheduled to present this testimony at the hearing, but due to illness was unable to do so. It is our understanding from conversations with Mr. Quaranta, that the hearing record is being held open until April 3, 1983 to receive additional testimony.

We appreciate the Subcommittee's interest in this matter and look forward to a response to the March 10, 1983 letter to OMB Director Stockman which was sent by the Subcommittee. Please direct any questions regarding our submittal to Phil Shimer of my staff.

Sincerely,

James D. Maddy
Executive Director

JMD:sln
Enclosures

Member Governors

Alaska
Bill Sheffield

Arizona
Bruce Babbitt

Colorado
Richard D Lamm

Idaho
John V Evans

Montana
Ted Schwinden

Nebraska
Robert Kerrey

Nevada
Richard H Bryan

New Mexico
Toney Anaya

North Dakota
Allen Olson (Chrmn)

South Dakota
William J Janklow

Utah
Scott M Matheson

Washington
John Spellman

Wyoming
Ed Herschler

Executive Director
James D Maddy

Statement by the Western Governors' Policy Office (WESTPO)
to the Subcommittee on Intergovernmental Relations
Senate Committee on Government Affairs

Executive Order 12372

The following constitutes testimony submitted for inclusion in the March 3, 1983, hearing record regarding the replacement of Office of Management and Budget (OMB) Circular A-95. It is submitted on behalf of the governors of Alaska, Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. We are pleased to comment on an initiative that we feel provides an important opportunity for strengthening state and local coordination and review of proposed federal financial assistance and direct federal development activities. At the request of the Subcommittee's staff, and because it is the priority interest of many western states, our remarks are limited to direct federal development activities which we have defined in a following paragraph. A copy of our February 24, 1983, letter to OMB Director Stockman outlining our broader concerns with Executive Order 12372 and describing specific recommendations for change, is attached.

For the past several years, the top priority of the western governors has been the pursuit of broad-based, federal-state, shared decisionmaking authority over federal land and resources. The reason for this is very simple, federal lands in the WESTPO states constitute nearly 56% of the region's acreage, ranging from just over 1% in Nebraska to over 85% in Nevada. Leasing and permitting decisions by the federal land management agencies which control these acreages (primarily the Bureau of Land Management and the Park Service within the Department of the Interior and the Forest Service within the Department of Agriculture) frequently affect air and water quality, water quantity, transportation systems, value and uses of adjacent non-federal lands, rapid growth or decline of nearby communities, etc. The states face all the health-safety-welfare responsibilities but lack adequate decisionmaking authority.

We had hoped that the rules for implementing the Order would allow for some consolidating of the fragmented statutory and administrative authorities which we currently have for affecting federal land management decisions. We had hoped that some truly new state consultation opportunities would be offered. We had hoped that a legally binding review process would be established. We had hoped for a menu of federal programs, from which states could choose those they wanted to include in their own state program. And we had particularly hoped for a broad definition of "direct federal development" programs so that we could have a wide freedom of choice regarding those programs we did choose to review. What we got was something much less than that, and included no definition, narrow or broad, for the term we had such interest in, "direct federal development." Needless to say we are greatly disappointed. At a minimum, we feel an adequate definition of direct federal development should include all proposed activities of the federal government. For example, construction of public buildings; acquisition, use, or disposal of federal real property; or implementation of military or scientific projects would be included in our definition.

Finally, we would like to emphasize our concerns over the proposed rules by singling out one federal agency, the Department of Interior, the largest landlord in the WESTPO region with acreage holdings constituting over 40% of our land. The preamble to Interior's proposed rules for implementing the Order states: "the Department believes it is more beneficial to continue existing consultation processes with state and local governments rather than imposing additional or duplicative regulatory requirements under the Executive Order." We believe this language is clearly counter to the expressed intent of the Order "that the states, in consultation with local general purpose governments and local special purpose governments they consider appropriate, develop their own processes or refine existing processes . . . to review and coordinate . . . direct federal development . . ." We feel it is inappropriate for Interior, or any other federal agency, to suggest that states cannot impose revised or reformed consultation requirements via the Order. It should be at the discretion of states to decide whether existing statutory or administrative processes are adequate and whether or not to streamline scheduling or consolidate formatting of plans. We believe that it was the spirit of the Order to provide increased flexibility to state and local governments in consulting with federal agencies. In keeping with this intent, it is quite possible that some states may wish to fold-in existing processes in order to strengthen or supplement the program developed under the Order. They should not be barred from doing so.

We are hopeful that Congress will thoroughly examine each of the proposed sets of agency rules in judging their adequacy for implementing and administering the Order and appropriate sections of the Intergovernmental Cooperation Act of 1968. We feel that the comments contained in this testimony and the recommendations held within our February 24th letter to Director Stockman are necessary to improving the intergovernmental cooperation we all want to see. If our recommendations cannot be accepted we believe the April 30th implementation deadline should be extended to allow for negotiations.

WESTPO
Western Governors' Policy Office

Western Governors' Policy Office
[illegible] Street
[illegible]
Denver, Colorado 80207
(303) [illegible]

February 24, 1983

David A. Stockman
Director
Executive Office of the President
Office of Management and Budget
Washington, DC 20503

Dear Director Stockman:

On January 24, 1983, an unprecedented 26 federal agencies simultaneously published proposed rules in the Federal Register to implement Executive Order 12372. States and others wishing to comment were given 45 days to review 223 pages of proposed regulations! Under these rules each state was given the opportunity to establish its own process for consultation with federal agencies on specific programs, projects, or activities to be chosen by the state. This letter of comment is being submitted on behalf of the governors of Alaska, Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, and Utah, who are members of the Western Governors' Policy Office (WESTPO), an independent, non-partisan organization of thirteen intermountain-high plains western states' governors. For the last several years, a top priority of the western governors has been the pursuit of broad-based, federal-state shared decisionmaking authority over federal land and resources. It is primarily in this context that we have reviewed the proposed regulations. We appreciate the opportunity to participate in this significant new policy initiative.

Embodied within the proposed rules of each federal agency is the requirement that for the sake of administrative convenience each state identify a "single point of contact" for communicating official state views to federal agencies. In this regard, it seems appropriate to us that the federal government also maintain this single contact point. In so far as your Office of Management and Budget (OMB) has coordinated the development of individual federal agency rules, reviewed possible changes to the Catalog of Federal Domestic Assistance, begun a review of Standard Form 424, and submitted a letter of guidance to each governor's office regarding Order implementation, our comments on the proposed rules are being submitted to you. It is our understanding from staff discussions with your Intergovernmental Affairs representatives that our comments will be forwarded to each federal agency proposing rules.

For ease in structuring our comments we have attempted to direct them to the broad questions listed in the proposed rules. These comments are as follows:

- (What is the purpose of these regulations?)

The purpose section of the regulations should set the tone and help to guide administrators, particularly federal administrators, in their interpretations of the rules' requirements. The purpose section of the proposed rules declares that the regulations are not intended "to create any right or benefit enforceable at law by a party..." We believe this language is unacceptable in the purpose section because it may discourage federal administrators from seeking mutually agreeable solutions with states on those issues where cooperative resolution is possible. The purpose section should clearly declare that federal administrators are required to seek cooperative solutions with states. The current denial of intent to create any enforceable rights is too negative and should be deleted. Similarly, the declaration that "these regulations are intended only to improve the internal management of the Department" should be deleted. This statement too is negative but it is also, we believe, wrong. These regulations should not be viewed as mere federal agency housekeeping rules. The regulations are required by the President's Executive Order 12372. That Order, in turn, was designed to implement the requirements of Title IV, particularly section 401, of the Intergovernmental Cooperation Act (ICA). Neither the ICA nor the Executive Order was intended "only to improve the internal management" of federal agencies. The ICA and the Order instead were intended to improve federal-state and federal-local trust, cooperation, and coordination in the implementation of federal programs. The purpose section already references the Executive Order. It should also reference Section 401 of the ICA and should contain strong language regarding the requirement to seek cooperative resolutions to intergovernmental problems. We suggest the following new purpose section.

(a) The regulations in this part implement the policies, purposes and requirements of Section 401 of Title IV of the Intergovernmental Cooperation Act (ICA; 42 USC 4231) and Executive Order 12372, issued July 14, 1982, titled "Intergovernmental Review of Federal Programs."

(b) As required by Section 401 of the ICA and Executive Order 12372, these regulations are designed to produce a cooperative intergovernmental partnership and a strengthened federalism by requiring federal administrators, to the maximum extent practicable, to make efforts to accommodate state and local concerns regarding federal financial assistance and/or direct federal development programs as those concerns are expressed through the processes provided for and authorized by these regulations."

- (What definitions apply to these regulations?)

The current definitions section of the proposed rules is incomplete. Certain key terms such as "accommodate" and "direct federal development" are too crucial to leave in doubt. The word "accommodate" is the operative word in the President's Executive Order (Section 2(c)) and is the lynch pin for the entire process of intergovernmental cooperation proposed by these regulations. State and local concerns must be either accommodated or not accommodated. The current definition of accommodation, as expressed in the proposed rules, actually includes the dictionary definition of nonaccommodation. This is simply too vague to effectively guide federal administrators, or to effectively judge the success of this new intergovernmental process. We therefore suggest a new definition of "accommodate." Likewise, the definition of which federal programs were to be covered by the "direct federal development" rubric is supposed to be satisfied by a list of federal programs, i.e., a federal program menu, for each agency. Such lists are either incomplete or nonexistent at the present time. States and others cannot be expected to comment on a process whose scope is not yet known to them. Admittedly, such a federal program menu may not be readily compilable and, once compiled, it may be constantly altered (for good reason). A simple list, therefore, is an accurate but ultimately inadequate guide as to what sorts of programs may fall under the "direct federal development" definition. We propose a general definition of the term "direct federal development" and a description of the types of programs which may be covered. Our proposed definitions are as follows:

> Accommodate:
>
> "Accommodate means to satisfy state and local concerns as expressed through the official state process by complying with state and local officially recommended methods for meeting those concerns or to reach a mutually agreeable solution with the state or locality."
>
>> Note: Both nonaccommodations and accommodations should be noticed in writing by the federal agency and forwarded to the state contact. Nonaccommodations, in particular, should not become effective until the official written notice of nonaccommodation has been published in the Federal Register and received by the state single point of contact (see additional following comments). Preamble language of the proposed rules suggests that notice of accommodation and/or nonaccommodation may be made by phone and must be written only if a Governor requests it. This, we believe, is too informal. Written notices serve to maintain a record of

cooperative efforts which may be used to judge the effectiveness of the new program. We believe that such a record may, in fact, be required by the Intergovernmental Cooperation Act.

Direct Federal Development:

"Direct federal development programs include, but are not limited to, federal planning and construction of public works, physical facilities and installations; federal land and real property use and development, including land use planning and land sales; federal land protection and preservation; federal mineral leasing and mining, both offshore and onshore; real property leasing by or for the federal government; and other real property acquisition, use or disposal undertaken by or for the federal government. Such programs also include the issuance of licenses, permits or similar authorizations by the federal government in connection with the implementation of a particular direct federal development program."

- (What programs and activities of the Department are subject to these regulations?)

The rules' preamble states that among other things the regulations do not apply to "budget formulation" or "national policy decisions." As states, the budget formulation process is important to our own internal decisionmaking. While we understand that the federal budget process may, in some instances, need to be excluded from state review and comment, we feel that better communication with the states is necessary. Consequently, we recommend that, to the extent feasible, the federal agencies use the process for implementing the Order to foster better communication on budget formulation, especially as it concerns the program implementation/allocation stage. Additionally, the term "national policy decisions" is vague, and can theoretically mean any activity of the federal government. We recommend that the term be stricken from the preamble. In fact, we prefer that all vague language contained in the preamble be excised in favor of precise language to be contained in regulation.

There is currently a great amount of discrepancy among agencies in how they have listed programs to be covered. Some have listed programs which will be covered, but their list is incomplete; others have not listed programs yet but plan to do soon, etc. This inconsistency among agencies is perhaps understandable, but it makes difficulties for states which seek to meet the March 10 comment deadline. We urge that consistency among agencies regarding the listing of programs, i.e., the types of programs which will be included or excluded, or both, be required. This consistency is particularly important for the sake of making complete, intelligent comments on the regulations.

- (How does the Secretary give states an opportunity to comment on proposed federal financial assistance and/or direct federal development?)

Based on our experience, we believe the 30-day time period recommended in the proposed rules for states to conduct their review and comment needs to be extended. Many local government officials and other entities which conduct reviews for local officials meet only once monthly. Additionally, the rural nature of many of the western states, means great distances and long mail delivery times between localities and state capitols. In order to allow local officials adequate time to consider and prepare their comments, and for those comments to be forwarded to the single point of contact for the state, it is necessary to extend the comment period to 45 days.

- (How does the Secretary make efforts to accommodate state and local concerns?)

States feel that in the spirit of cooperation and trust, judicial review should not be a readily available option under this new process. States do feel, however, that there will be times when the judgement of a disinterested third party may satisfy a state or an agency that a particular accommodation or nonaccommodation decision is justified. The review process which we are suggesting is outlined below. We believe it will help to keep certain accommodation or nonaccommodation decisions out of court under judicial review opportunities available under program-specific statutes or other generic authority. We recommend this section be revised to read:

> "(a) If a state provides comments to the Department through the official state process designated under these regulations, the Secretary shall seek to accommodate state and local concerns. All instances of accommodation shall be noticed in writing to the offical state contact. Copies shall also be sent to the Governor of a state if provided for in the state process or if requested by a Governor.
>
> (b) If the Secretary cannot accommodate state and local concerns, a written notice of nonaccommodation shall be sent by the Secretary to the official state contact and the Governor of the relevant state. Notice of nonaccommodation shall also be published with explanatory information in the Federal Register. Such written and published notices shall clearly state why accommodation cannot occur and in particular shall cite legal authorities which prevent the Secretary from accommodating state and local concerns.

(c) If a state or the Department disagrees that an accommodation has been reached or that nonaccommodation is required, either party may appeal to the Director of the Office of Management Budget, or his designee, by filing a notice of appeal with the Director. The Director, or his designee, shall issue a final decision regarding whether accommodation has occurred or nonaccommodation is required within 30 days of the date of filing an appeal. Such final decisions shall be in writing, with concise explanations of conclusions reached, and forwarded immediately to the disputing parties. In cases of nonaccommodation subject to unusual circumstances, subsection (d) below shall apply.

(d) Except in unusual circumstances, decisions implementing nonaccommodation shall not take effect until 10 days after receipt by the official state contact of the nonaccommodation notice. Where such unusual circumstances exist requiring earlier effectiveness of the nonaccommodation decision, those circumstances shall be clearly explained in the Federal Register notice of nonaccommodation. **Provided that**, if a nonaccommodation decision which the Secretary believes involves unusual circumstances is appealed to the Director of OMB, the Department shall not act on the decision prior to the Director's decision on the appeal. **Provided further**, however, that if the Secretary notifies the Director in writing that the Department believes unusual circumstances exist, the Director shall issue a decision on the appeal within 10 days of the date of the Secretary's notification."

(May the Secretary waive any provision of these regulations?)

The last section of the proposed regulations authorizes the Secretary of a Department to waive any portion of the rules in an "emergency." The word "emergency" is nowhere defined. Unless "emergency" is adequately defined, we believe the section should be deleted. We do note, however, that any adequate definition should be limited to clear national emergencies, such as those endangering national security.

Finally, while the proposed rules attempt to provide for a new, more effective, intergovernmental consultation system for state and local governments, they ignore the continued need for strong federal interagency coordination mechanisms. We therefore request that a new subsection be added as follows:

"(How does the Secretary ensure that the Department's actions are coordinated with those of other federal agencies?)

(a) Each federal department or agency administering a financial assistance or direct development program shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected federal departments and agencies in an effort to assure fully coordinated programs."

The previously outlined concerns constitute only our generic concerns with the proposed rules and were developed following a limited review. They are what we perceive as the major shortcomings, and we believe that the changes we have recommended would strengthen the effectiveness of the federal/state/local consultation process intended to be fostered under the Order. We strongly recommend that OMB make every effort to accommodate these suggestions. If our suggestions and recommendations cannot be accepted we would request a written statement as to why you cannot agree. Further, if our comments cannot be accepted, then we suggest that the March 10th comment period deadline be extended to provide states and others an adequate amount of time for negotiating these and other potential recommendations for change. We would also request that the April 30th deadline for states to designate their process for Order implementation also be extended to allow time for negotiation.

Again, we appreciate the opportunity to comment on what we still perceive to be a real opportunity for strengthening the consultation process. We trust that our concerns will be transmitted to other federal agencies and dealt with accordingly.

Sincerely,

Ed Herschler

Ed Herschler
Governor

EH:sln

cc: Richard S. Williamson
WESTPO Governors

FROM THE OFFICE OF THE CLERK

JENKINS TOWNSHIP
CROW WING COUNTY, MINNESOTA
Post Office - Pequot Lakes, Mn. 56472

March 22, 1983

Senator Dave Durenberger
375 Russell Building
Washington, D. C. 20510

Dear Dave:

I'm extremely disturbed....

As chairman of our Jenkins Township Board, I am very concerned on behalf of our people whom we represent, relative to Regional Development commissions. We are definitely against this form of government. We are against anything that supports or encourages this unnecessary expenditure of funds.

I have personally met with the township organizations of three counties, and will meet in the next couple of weeks with the other two counties who comprise Region V. In the three counties I have visited, it was the unanimous opinion of the townships that Region V be dissolved.

I have also met with some of the city councils of cities within this Region, and I have been assured they will provide me with resolutions to support dissolution of the Region V Development Commission.

I give you this background because when I learned that David Lock was asked by your office to testify at your Inter-Governmental Sub-Committee Hearing on March 3, 1983, I was, to say the least, dumfounded. Mr. Locke is pro-regional, and does not represent the large majority of the people in the five counties comprising Region V.
This, then, is why we have asked to have the enclosed become part of the record relative to the hearing held on March 3, 1983. Dave, I can sincerely say we are all for you, but next time have Phil Cohen make sure he gets someone who truly represents our area.

Sincerely,

CDonald Rieck

C. Donald Rieck, Chairman
JENKINS TOWNSHIP BOARD

CC Senator Rudy Boschwitz
Congressman Arlan Stangland
Congressman James Oberstar

FROM THE OFFICE OF THE CLERK
JENKINS TOWNSHIP
CROW WING COUNTY, MINNESOTA
Post Office - Pequot Lakes, Mn. 56472

March 22, 1983

Written testimony for inclusion in the report of the Inter-Governmental Sub-Committee Hearing of March 3, 1983

I speak in favor of Executive Order 12372, replacing A-95 Project Review Notification. Although the concept of the A-95 process appeared to have merit, in practice it became one more political ballgame. Those people who sat on local clearinghouse boards were well aware that approval for pet projects in their areas was dependant on and approval of the pet projects of their neighbor. Objectivity was never the order of the day. A case in point to demonstrate this: Recently I attended a meeting of the local executive committee who were "reviewing" the A-95s. Little information regarding the numerous sewer and water grant applications had been provided. A member of the Board suggested that a certain application be approved, provided questions regarding the availability of a water system and storm-sewer were answered, and inquired if the small community in question had a comprehensive or development plan. This Board member was criticized for suggesting this, -- other Board members arguing that we "approve all applications or none".
Sadly, this is the rule rather than the exception. What has taken place because of A-95 is one more grant log-rolling exercise.

Perhaps the most serious deficiency of the present A-95 process is the substantial power placed in the hands of Regional staff people. Through the active use of their own bias, they have the ability to manipulate comments and action of the Board. We have observed the exercise of this power to assist those politically attuned to staff -- again hardly a process of objectivity.
In Minnesota, three of the thirteen regional development commissions have chosen to disband themselves, and at least two more are presently gathering petitions to disband -- this in spite of the fact that Minnesota law makes the dissolution process difficult and cumbersome.

page 2

Dozens of local officials can no longer bear the erosion of grass roots government with its workable rational system of accountability sacrificed to the demands of a largely non-accountable, non-responsible self-serving regional board.

I applaud the proposal for a single point of contact (the State), and further suggest that in Minnesota we have a highly skilled and functional State organization for each of our four major units - cities, counties, townships and school, --further, that all elected persons are urged to participate within their organization. Contrast this with the State organization for regional commissions (M.A.R.C.) where only the chairman can vote and participate, and where most meetings are not held open to public scrutiny.

The new Federalism and review system must seek to strengthen local independance, not expand the federal "sugar daddy" role. This can best be accomplished by increasing block grant type programs, with few strings attached. A second requirement -- a precise role definition for federal, state, and local government to avoid overlap and to establish clear lines of authority. I believe that such steps can successfully reduce total taxpayer cost, improve service, and will be a natural mechanism to insure priority setting and accountability at every level.

To sum up - review process of grants is necessary only so long as the government retains the grant process. The real question should be: Is this the preferable option? I suggest it is not, that categorical grants be quickly eliminated in favor of blocks, and that, additionally, greater responsibility be returned to local government. I submit, it is an experiment worth trying.

Respectfully submitted,

C Donald Rieck

C. Donald Rieck, Chairman
JENKINS TOWNSHIP BOARD

Greater Portland Council of Governments
331 Veranda Street · Portland, Maine 04103 · (207) 774-9891

RECOMMENDATIONS FOR A FUTURE INTERGOVERNMENTAL REVIEW PROCESS

This document was prepared and unanimously endorsed by the A-95 Planning & Program Review Committee and the Executive Committee of the Greater Portland Council of Governments.

A-95 Planning & Program Review Committee

Harry Cummings, Chairman
George Bahamonde
Janis McGrath
Donald McNamara
K. Wayne Murray
Brian Olson
John Swan

GPCOG Staff:
Jacqueline Cohen, Senior Planner

Bridgton - Cape Elizabeth - Casco - Cumberland - Falmouth - Freeport - Gorham - Gray
Harrison - Naples - Portland - Pownal - Scarborough - Sebago - Westbrook - Windham - Yarmouth

Greater Portland Council of Governments
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Executive Committee Members

James Mains, Bridgton
Penny Carson, Cape Elizabeth
George Hanscom, Casco
Alvin Ahlers, Cumberland
Robert Feeney, Falmouth
John Swan, Freeport
Ernest Cressey, Gorham
Robert Clark, Gray
Susan Searles, Harrison
Walter Burnham, Naples
Linda Abromson, Portland
Gerald Rolfe, Pownal
John Griffin, Scarborough
George Anderson, Sebago
Philip Spiller, Westbrook
Kenneth Cole, III, Windham
Clinton Mason, Yarmouth
Harry Cummings, GPCOG Planning Committee
Joseph Mazziotti, Cumberland County
A. Wayne Cobb, PROP
John Malley, Cumberland County S&WCD
Edward Coyle, Cumberland County S&WCD
Joseph Taylor, Portland Water District

Bridgton - Cape Elizabeth - Casco - Cumberland - Falmouth - Freeport - Gorham - Gray
Harrison - Naples - Portland - Pownal - Scarborough - Sebago - Westbrook - Windham - Yarmouth

Overview

The Executive Committee of the Greater Portland Council of Governments strongly endorses a meaningful intergovernmental review process. As the regional clearinghouse designated by the federal government, GPCOG has been conducting A-95 Reviews of applications for federal funds for many years. We have devoted time, effort and funds to the process in order that it work as well as possible. Because the A-95 process was federally regulated, we were required to conduct it under federal guidelines. In response to an Executive Order from the President of the United States, the State of Maine has the opportunity to develop a new, more relevant review process. This opportunity should be seized immediately.

In order to strengthen the present intergovernmental review process, we must consider the strengths and weaknesses of the previous procedures and the present and future dynamics of the federal-state-local governmental partnership. In this position paper, an analysis of this region's past experience and local officials' posture on the new federalism is the foundation of a series of recommendations which we encourage the State to adopt. The ideas and positions were developed over several months and reflect the viewpoints of local elected and appointed municipal officials. The Chamber of Commerce and the United Way were also involved in the process.

Our local leaders feel that a strong intergovernmental review process is needed in Maine. This process should place a premium on local involvement, involvement that can be designed regionally using the present regional clearinghouse network. A state-local partnership in the review process will lead to orderly and efficient design and implementation of governmental services.

Actual and Potential Strengths of Intergovernmental Review

The fundamental purpose of an intergovernmental review process is to ensure that new governmental programs contribute to the orderly development of the region. The reviews are conducted by local, elected officials, who represent their municipalities individually and the region collectively. Local, elected officials are most responsible for dealing with their municipalities' problems, needs and assets. It is appropriate for them to analyze the relative merits of proposed programs.

The following benefits have occurred in our region through the existing process:

1. Duplication of programs has been discouraged.
2. Coordination of related activities of different agencies has been promoted and even required.
3. Cost savings have resulted from the elimination of duplicative, unneeded and/or poorly administered programs.
4. Through the requests for comments from municipalities, private and non-profit agencies, staff contacts and the Committee meetings, communication between all parties was increased.

5. The regional perspective was taken into account, especially through Committee deliberations about individual projects.
6. Early discussions about the projects resulted in improved applications.
7. Decisions requiring the prioritization of local projects were most rationally made at the local level by people who were knowledgeable about the local situation.
8. Communication and coordination between the various levels of government (local, state, federal) increased.
9. The availability of grants and loans for certain projects was made known to all municipalities and other organizations through this process.

These benefits could be increased if we strengthen the present process.

Weaknesses of the Existing Review Process

The A-95 review process was mandated by state and federal laws which determined the structure of local, state and federal involvement in the intergovernmental review process. Problems existed both with the design and the implementation of that structure. Listed below are problems related to the federal and state involvement in the process. Some problems specifically relate to the requirements of the law; other problems were caused by an unwillingness on the part of the federal and state governments to truly participate in a partnership with local governments.

The following comments relate to Federal involvement in the review process:

1. The federal government did not take seriously the region's conditional or negative recommendations of projects. In some cases, local recommendations were ignored.
2. On occasion, projects were funded before the review process even began.
3. In order to do a substantive review, adequate time is required. Thirty days and sometimes less, if the application was not submitted on time, might be an inadequate amount of time to properly review a major, controversial project.
4. Federal directives and instructions were obscure. This created two problems. First, the applicants were confused about how they were to participate in the process. Second, because of this confusion, some reviews were undertaken only to "be on the safe side". This created unnecessary work for everyone.
5. Because each municipality might be reluctant to criticize the need for projects of another municipality, submitted comments might be vague.

6. The A-95 Review Committee did adopt a regional perspective. However, that stance requires an up-to-date set of regional policies which have been adopted by the municipalities. Greater Portland's adopted regional policy framework is almost five years old. An update is needed to guide the review process, but the federal government has terminated funding for this vital work. In order for review standards to be consistent, a revised regional policy framework is a necessity.
7. The federal government did not fund the intergovernmental review process even though it is required by Congress.

The following comments relate to State involvement in the review process.

1. Local, federally funded projects were submitted to the State Clearinghouse. This step was unnecessary since the State Clearinghouse followed our recommendations on almost every occasion.
2. State plans were infrequently forwarded to the regional clearinghouse for comment; therefore, we did not have the opportunity to comment on programs affecting our municipalities and our region. State law requires our participation in a review process but we were not an active participant because some departments did not afford us that opportunity.
3. The State government provided no financial support for a review process even though state law requires our participation.

These weaknesses in the system can be eliminated if a strong commitment to a workable intergovernmental review process is made by all levels of government.

Recommendations

The Executive Committee of the Greater Portland Council of Governments, representing seventeen member communities and composed of local, elected and appointed officials, has analyzed the strengths and weakneses of the present intergovernmental review process. It strongly supports a substantial level of cooperation between all three levels of government and is convinced that only through cooperation can the orderly development of the region occur. The major element which must be included in any cooperative process is a recognition at the state and federal level that local, elected officials working together at the regional level are most knowledgeable about their regions. They should be delegated a responsible role in the intergovernmental review process.

In this spirit, the following recommendations are supported by the Executive Committee:

1. An intergovernmental review process should be maintained.

2. Local/regional participation in all reviews should be mandated. For applications for local projects requesting direct federal funds, recommendations within the state should be made at the local/regional level. The State should be invited to comment but not duplicate the reviewing mechanism.

3. Regional clearinghouses should be chosen by the State on the basis of how representative they are of their regions. If at all possible, local, elected officials should be the clearinghouse's policy board which makes the final recommendations. If the clearinghouse is not governed by local, elected officials (e.g., an RPC), either a review board could be created or the clearinghouse could forward all comments from local, elected officials and others to the state or federal government.

4. The review process should build on a local, planning and policy making process. Review recommendations should be based on regional development policies adopted by local officials. Those policies would cover the major functional areas such as economic development, transportation, environmental issues, housing, etc. Policy planning should be encouraged and supported by the State.

5. The state should develop an "enforcement" procedure so that it properly responds to regional comments on state plans.

   a. Negative comments by regional clearinghouses should be answered.
   b. Mediation might be required for conflicts between local concerns and program sponsor goals.

6. The State has been using the public hearing process to elicit local comments on State plans. That procedure is inadequate. A written comment procedure permitting adequate time for substantial response at the local level should be instituted. An improved coordination mechanism for state plans at the state level should be developed. At the state level, an arbitration board could be instituted to deal with conflicts between departmental plans.

7. Time frames for reviewing projects and depth of the review itself should be related to the significance of the project. Major plans should be allowed more time so substantial analysis can be accomplished. However, all projects should be reviewed in some way due to the potential cumulative impact of many small projects. For these, the reviews could consist of notification of interested parties and passing on their comments to the appropriate level of government.

   Unnecessary paperwork and effort could be eliminated if different expectations existed for applications having different levels of significance.

8. Even though the state cannot require that the federal government adopt a responsive attitude toward negative comments, it should strongly communicate to the federal government that it supports a strong "enforcement" procedure similar to the one suggested in (5) above.

9. Future emphasis of the review process should be on the local-regional-state relationship rather than on the local-regional-federal relationship due to the increased use of the block grant program. A comprehensive regional reviewing mechanism could be developed by which reviews of local and regional projects are delegated by the State departments (e.g., MDOT, DEP) to the regional clearinghouse.

10. The regional review process should:

    a. Solicit a wide range of comments including those from the private sector and non-profit organizations.
    b. Widely publicize projects so that more people are aware of the review.

11. A funding mechanism is needed. Regions cannot continue to be the sole financial supporters of the review process. At the state level, it could be funded through an appropriation related to the management of block grants (e.g., priority setting procedures or the CDBG program).

Summary & Conclusions

As a result of the President's Executive Order directing the states to devise individual intergovernmental review processes most relevant to them, the State of Maine now has an opportunity to forge a new and more meaningful partnership with local municipalities. That opportunity should be seized and made a reality.

The existing review procedures required under state and federal law have strengths and weaknesses. The strengths and weaknesses were caused both by the specific legislation and its subsequent administrative regulation (or lack thereof) as well as the level of commitment made at the local level to the review process. In our region, local, elected officials actively supported it by participating both at the municipal and at the regional level.

The A-95 Committee of the Greater Portland Council of Governments was created by the local, elected officials who represent their municipalities on the Executive Committee which governs the regional body. Staff time and monetary resources were allocated to the process and extensive participation was encouraged. The strengths and accomplishments which are described above are a result of that firm support. We also recognize that, on occasion, our recommendations were taken seriously because we are a council of governments governed by local elected officials. This, however, was not always the case. The weaknesses described above centered on the lack of meaningful response to our local concerns as well as the inefficiencies of the regulations and lack of adequate funding. These deficiencies were beyond our ability at the local/regional level to correct.

The recommendations which we forward to you are based on the following general premise: only through the cooperation of all levels of government can orderly development proceed. The specific conclusion we draw is that if orderly development is to occur in our region, local, elected officials must be able to participate in a meaningful and relevant way in an intergovernmental review process. We urge the State of Maine to create such a process and to permit us to join with you in this effort.

Consortium for
Citizens with
Developmental
Disabilities

Task Force on Intergovernmental Relations
For More Information, Contact:
E. Clarke Ross, D.P.A., 425 Eye Street, N.W.
Suite 141, Washington, D.C. 20001
(202) 842-1266

STATEMENT

RESPECTFULLY SUBMITTED

ON

JANUARY 24, 1983 PROPOSED REVISED

OMB CIRCULAR A-95: INTERGOVERNMENTAL

REVIEW OF FEDERAL PROGRAMS

(EXECUTIVE ORDER 12372)

ON BEHALF OF

CONSORTIUM FOR CITIZENS WITH DEVELOPMENTAL DISABILITIES

TASK FORCE ON INTERGOVERNMENTAL RELATIONS

- American Speech-Language-Hearing Association
- Association for Retarded Citizens
- Child Welfare League of America
- Council for Exceptional Children
- National Association of Developmental Disabilities Councils
- National Association of State Mental Retardation Program Directors
- National Rehabilitation Association
- United Cerebral Palsy Associations, Inc. (Chair)

March 2, 1983

The organizations which comprise the Consortium for Citizens with Developmental Disabilities (CCDD) Task Force on Intergovernmental Relations express their opposition to the inclusion of the Title IV-E Adoption Assistance, Title IV-B Child Welfare Services, Developmental Disabilities, and P.L. 94-142 "Education for All Handicapped Children Act" programs in the list of federal programs which the Office of Management and Budget has targeted for state plan simplification, substitution, or consolidation in their January 24, 1983 proposed regulations. Our opposition is based both on general policy concerns and specific program statutory authority.

A primary method used over the years by national disability advocates to ensure that federal funds are targeted to the disabled is the use of "categorical" program allocations which use state plans to guarantee that statutory requirements are followed. Experience demonstrates that persons with disabilities are frequently overlooked when categorical targeting is abolished. The January 24 proposed regulations have the potential of undermining this categorical targeting of resources. Our associations have similar concerns with other targeted programs such as Vocational Rehabilitation and Vocational Education.

- General Policy Concerns

In 1981, the Administration proposed block granting each of the four programs cited above. The Congress, through its Budget Reconciliation measure (P.L. 97-35), clearly expressed its intent that these programs should remain separate categorical programs and thus were not consolidated. Also in 1981, the Administration sought enactment of a more generic legislative authority to expand the Administration's block grant ability (Title I, S. 807) which was rejected by the Senate Rules Committee by a vote of 10-1. In 1982, not a single member of Congress introduced in bill form the Administration's proposals to block grant P.L. 94-142 and terminate through New Federalism turnback the Adoption Assistance and Child Welfare Services programs.

Now we are faced with another mechanism whereby the Administration hopes to consolidate categorical programs despite clear Congressional intent. It is completely frustrating to observe the Administration's constant ignoring of Congressional intent regarding certain federal programs which assist persons with disabilities.

In October 1981, the University of Southern California School of Public Administration issued its contract report, "Evaluation of the Planning Requirements Reform Demonstration Project of the U.S. Department of Health and Human Services." This project involved a twelve state "demonstration of alternative approaches to meeting federal planning requirements in a less burdensome and more useful manner." HHS wanted to determine the extent to which a state's own planning and budgeting processes can be substituted for federal planning requirements. The findings of the twelve state demonstration clearly undermine the January 24 proposed state plan provisions. It is interesting to note that the January 24 proposals completely ignore this HHS contract. Some of the contract findings of importance are:

1) "The collective experience of the project states suggests that the perceived federal burden was less significant than the original state rhetoric of complaints had suggested." (pg. 3)

2) "The project appeared to refute-at least partially-arguments that have been made over the years that characterize planning as a free-standing enterprise. Both federal and state officials began to appreciate how difficult it was to extricate planning requirements from other substantive requirements in a program." (pg. 4)

3) "Although the rhetoric of most criticism relates to the burden of the plan document, this project indicated that states do not have great difficulty in writing plans." (pg. 4) It is the planning process that specifies details (burdens).

4) "Although states usually argue for open-ended funding without strings or deferred federal expenditures, the experience of the project pushed state project staffs to argue the reverse. Most of the state people involved in the project completed it convinced that the development of the effort required 'federal strings.' For most of the states in the project, without federal strings (e.g., deliverables or specific requirements), little would have occurred within the states." (pg. 4-5)

5) Much of the original rhetoric around the justification for the demonstration project related to questions of efficiency. The claim, both explicitly and implicitly, was that states would find more efficient ways to accomplishing planning when they could avoid federal compliance requirements. A number of states did report savings in paperwork, often as a result of consolidated assurance packages. States found that planning was a very time-consuming activity. Thus if time was the measure of efficiency, the project created less efficiency within the states. (pg. 9)

- Title IV-E, Foster Care and Adoption Assistance

Executive Order 12372 lists Title IV-E Foster Care as one of the financial transfer programs for which HHS has no funding discretion or direct authority to approve specific sites or projects (Federal Register, p. 3147), and lists Adoption Assistance under "Programs Subject to Executive Order 12372." Foster Care was not included due to the fact that it is an entitlement program for eligible children, and payments are in effect transfer payments from the federal government to the states. Adoption Assistance is also an entitlement program for eligible children and their adoptive families, and as such, is also a transfer payment program which should not be included in the list of programs subject to the Executive Order.

P.L. 96-272, the "Adoption Assistance and Child Welfare Act of 1980" requires that a state must provide a state plan for foster care and adoption assistance in order to be eligible for Title IV-E funds. There is no provision under law that would allow these programs to be separated from one another as the Executive Order 12372 does. Therefore, Title IV-E Adoption Assistance should be listed with Title IV-E Foster Care as a financial transfer program which is exempt from the order.

- Title IV-B, Child Welfare Services

In order for a state to be eligible for federal monies under Title IV-B, the Adoption Assistance and Child Welfare Act requires that a state have a plan for child welfare services which has been developed jointly by the Secretary of the Department of Health and Human Services and the designated state agency. The authorizing statute is quite specific as to the description of services, description of steps towards providing child welfare services, and coordination between the Title IV-B plan and the plans for Titles IV-A, E, and XX of the Social Security Act. The reason for the specificity of the planning provisions is that child welfare services are the critical ingredient to reforming the child welfare system which had many children languishing in foster care. When the Adoption Assistance and Child Welfare Act was passed, the authorizing committees understood the importance or the coordination of Title XX and Foster Care, Adoption Assistance and Child Welfare Services. They therefore mandated a specific state planning process and the coordination of the process in order to maximize the services for vulnerable children and their families.

On January 6, 1981, HHS published the final Guidelines for Development of State Child Welfare Services Plans which defined the elements to be included in the state plan and the process by which the state agency and the Secretary would jointly develop the Title IV-B plan. These final guidelines were later withdrawn, and since the regulations for the act have not been published in final form, the statute itself serves as the guide for planning. Since the law has been neither amended or repealed, and since the planning for child welfare services as dictated by the provisions of the law is critical to verification of state compliance, it is inappropriate and unsound policy for the Title IV-B plans to be included under Executive Order 12372.

- The Developmental Disabilities State Plan

1) Overview

Section 133 of P.L. 95-602 as amended requires a Three Year Plan for the DD Basic State Grant Program. During early 1983, the ADD developed draft guidelines for the FY '84-'86 plan which, after public review and comment, were sent to OMB for approval. Also pending OMB's approval were draft proposed regulations for the DD program. The decision was made that the regulations should list the elements mandated by the statute for inclusion in the state plan and that any guidelines issued were to be optional and voluntary. It should be noted that states overwhelmingly accepted the "draft" guidelines on the basis of their utility and flexibility on the state level and their pertinence to national policy development.

There are 27 individual elements delineated in the statute as requirements for the state plan and, therefore, for the receipt of Basic State Grant Funds.

The DD State Plan is an advocacy plan; that is, it establishes policy and action goals, gained through the consensus of major state actors.

2) General Impact

According to an HHS study of a recently completed demonstration project involving the consolidation of state plans in a variety of human services programs, the impact of state plan consolidation of the DD program with other programs in 5 of the 12 states studied was either non-existent or, more frequently, negative.

The planning requirements of the DD program are central to the advocacy and capacity building roles of the Basic State Grant Program. Plans are developed by DD Councils jointly with the designated state agency. The previous guidelines and the draft voluntary guidelines, while containing assurances, are very specific and are linked to detailed descriptions of objectives and services against which the program is held accountable. The Plan is a vehicle, an organizing force, to obtain services for the developmentally disabled population.

This kind of planning assumes that there is a population not being served and that the system needs to be organized around how to meet stated service goals. The DD Act specifies four service priority areas from which the states select their plans' goals and objectives.

Many of the regional federal officials felt that "the concept of a consolidated plan violated the spirit of the DD advocacy effort." They also had questions about how efficient and effective consolidation was.

A few states did an independent DD plan which could be approved by ADD, in addition to their "piece" of the consolidated plan; therefore, there was more, rather than less, paperwork done on the state level; and more, rather than less, time used for plan review by regional and central office federal officials. One state which submitted its consolidated plan to ADD had it rejected, causing a re-write to enable receipt of federal funds.

The evaluation study concludes that "the different construct of the (DD) program makes it somewhat different from other federal efforts."

3) Comparison With Statutory Authority

Of the 27 required state plan components, Executive Order 12372 would specifically include none of them except to state that statutory requirements must be included. This Executive Order, seen in the context of other recently issued administration positions, however, can be seen as an attempt to eliminate the DD plan. Proposed DD regulations issued on February 23, 1983, eliminate 11 of the 27 items Congress requires in the state plan, based upon ADD's interpretation of this Executive Order. Therefore, this analysis includes a comparison of the statutory plan requirement with recent administration policy statements and issuances as well as with the Executive Order.

States are already permitted to substitute their own plans for the federally required DD plan. However, the DD program itself, rather than an umbrella agency, develops the plan for the Governor's approval and submission. Because it is an "advocacy plan," consolidation with other state programs which are being influenced to serve the DD population would likely result in eliminating several specific plan items required by the statute; namely

Section 133 (b) 2A:

Specific objectives which aim to modify other agencies' services would likely be deleted

2 (B) and 2 (C):

Descriptions of the scope and extent of services found to be unresponsive or resistant to services to the DD population would likely be deleted

2 (D):

A method to monitor other agencies' responsiveness to the advocacy plan would likely be deleted since agencies, once influenced, might not wish their program change to be attributable to DD program activities.

These items, coupled with the deletion of the 16 of the 27 statutory requirements in the recently released regulations, create a picture of the State DD Plan as a barren document, incomplete for even compliance purposes and powerless in its ability to fulfill Congressional intent.

It was the experience of the several states' DD programs participating in the recently ended demonstration project that

1) the DD plan was inappropriately consolidated with other programs due to happenstance of the placement of the DD program within state government.

2) that the essence of the DD program is negotiation with state government agencies and that plan consolidation frequently interfered with, rather than enhanced, inter-agency negotiation and cooperation.

3) that simplification often reduced the DD program to a list of assurances which existed on paper to enable the state to receive DD funds but which were, in fact, never intended for implementation.

4) that the DD program, because of its statutory purpose, does not "mesh" well with the plans of direct service state agencies. Because of the broadness and scope of the federal mandate, plan elements had little to do with the elements of other state plans done for other purposes.

5) that since the DD population is small when compared to other service groups and complex to serve, the DD plan was viewed as needing too many resources when compared to the size of the population.

Given the Administration's proposal to consolidate major human service programs and to cap them at '84 appropriation levels until 1987 when funds can then be transferred from program to program based on some state judgment regarding priorities, we oppose the implementation of this executive order based on its intention to position the DD program in such a way that, in a few years, Basic State Grant funds could be used not for the purposes in the DD Act, but for almost any human service purpose.

In conclusion, while state plan consolidation may appear to be a more efficient mode of relating to the federal government, for the DD program, consolidation would not only be inefficient, it would greatly reduce the effectiveness of this program.

- P.L. 94-142: The "Education for All Handicapped Children Act"

The Office of Management and Budget has included P.L. 94-142 in its list of state plans eligible for modification under E.O. 12372. We believe this to be a violation of the statutory requirements as well as contrary to sound administrative policy, and would recommend that this state plan be exempted from the Executive Order for the following reasons:

1) Section 612 and 613 (20 USC 1412 and 1413) of the Act set forth specific eligibility and state plan requirements which a state must meet in order to participate under the Act. In order to qualify for assistance in any fiscal year, states are required to demonstrate to the Secretary that a number of conditions have been met (i.e., the state has in effect a policy assuring a free appropriate public education for all handicapped children by September 1, 1980; procedures for child identification, least restrictive environment, nondiscriminatory evaluation; and established individualized education programs and procedural safeguards, etc.). States meeting these requirements must submit through their state education agency a state plan which contains policies and procedures for implementation of a comprehensive system of personnel development, participation of handicapped children in private schools, program evaluation, state advisory panels, etc., as well as assurance on commingling/nonsupplanting, proper use of funds, etc. While the Act gives the Secretary the discretion to determine the information to be included in the plan as well as the time and manner in which the plan is to be submitted, the enabling statute does not authorize the Secretary to allow the states to substitute, simplify or consolidate these state plan requirements.

2) Unlike several years ago when the plans were submitted annually, state plans are now submitted and approved for three year intervals which would seem to provide sufficient time for states to design and develop their plans.

3) One of the major recommendations by states over the years was the need for the Department of Education to establish specific time lines for the review and approval of state plans. This suggestion was later incorporated into the 1980 Department of Education Memorandum of Understanding. Since the Department is required to follow definitive time lines in processing state plans, we believe it is reasonable to expect states to submit their state plans on a date certain.

4) During the comment period on the proposed P.L. 94-142 regulations, the Department of Education indicated it had reviewed its state plan procedures and had revised the format to more adequately reflect the applicable requirements of P.L. 94-142 and the General Education Provisions Act (GEPA). While we believe this will be helpful in terms of furthering the public's understanding of the plan, this will not be the case if states are allowed to consolidate this plan with others. This would unnecessarily complicate the review process and could result in a form of citizen inaccessibility to P.L. 94-142.

- Conclusion

The Executive Order and its implementing regulations are incompatible with the program purposes and statutory objectives of the Adoption Assistance, Child Welfare Services, Developmental Disabilities, and P.L. 94-142 Education for Handicapped Children programs. The twelve state HHS demonstration clearly demonstrated that consolidated state plans are not the panacea claimed in the January 24 proposed regulations. Dangers exist that a consolidated document will not be subject to citizen review, will not insure program integrity and accountability, and will allow one service mode and agency to overpower all other service modes and agencies. In these struggles for visability, independence, and targeting, persons with disabilities are very likely to be the losers.

OFFICE OF MANAGEMENT AND BUDGET

Implementation of Executive Order 12372, "Intergovernmental Review of Federal Programs"

AGENCY: Intergovernmental Affairs Division and Associate Director for Management and Budget.

ACTION: Notice of Letter to the Governors.

SUMMARY: Executive Order 12372,"Intergovernmental Review of Federal Programs," was signed by President Reagan on July 14, 1982. Each agency's proposed implementing rule or notice was published in the January 24, 1983 Federal Register for public comment. These documents referenced an OMB letter of guidance to the Governors advising them of information states need to submit to the Federal Government in order to participate in the implementation of Executive Order 12372. A sample letter is reproduced below:

Executive Office of the President,
Office of Management and Budget,
Washington, D.C. 20503

Hon. Scott M. Matheson,
Governor of Utah,
Salt Lake City, Utah

Dear Governor Matheson: The purpose of this letter is to advise you of the information the states need to submit to the Federal Government in order to participate in the implementation of Executive Order 12372, "Intergovernmental Review of Federal Programs,"about which I wrote the governors previouisly. Proposed implementing rules, which are simple and regulate only Federal actions, will be published in the January 24th Federal Register, with an invitation for comment by March 10, 1983. The information listed in this letter should be considered in the context of the proposed rules.

There are three types of information a state needs to provide OMB in order to initiate the new simplified intergovernmental reivew procedures:

1. Identify or develop a process for reivewing and commenting on Federal financial assistance and direct development activities; designate it as such by any appropriate official action or constitutionally recognized means (e.g., legislation, executive order); and provide the Office of Management and Budget with an assurance:

- that elected officials have been involved in the designation of the process, and that the process is in full compliance with all the requirements of the Order.
- that the state's process has been developed in consultation with local general purpose governments, and local special purpose governments the state considers appropriate; and
- that local elected officials have been consulted on the selection of Federal programs and activities to be covered by the state process.

If the assurance submitted on behalf of the state is signed by the governor, the Federal government will make no further verification.

2. Send a list of the Federal programs and activities the state wants covered by its process to OMB.

The Federal programs and activities eligible for coverage by your process can be determined from two sources. First, the Federal agencies have published lists of the programs and activities they propose to *exclude* from coverage as attachments to the proposed rules. Agencies are seeking public comment on these. Second, Federal agencies will provide information on programs and activities *currently eligible* for coverage under the Order. Pending receipt of this information, you may assume, for planning purposes, that all Federal financial assistance and direct development activities not proposed for exclusion are eligible for coverage. From the programs eligible for coverage, a state can specify as many or as few as it wishes to review.

3. Provide OMB with the name and address of the single office or official in the state who is empowered to transmit the comments generated by the designated state process.

Submission of the "state's official views" by a single point of contact will inform the Federal agencies that the Executive Order and its implementing provisions apply to that submission. The existence of the single point of contact does not, of course, preclude the normal day-to-day communication that has always existed among Federal, State, and local officials.

A state is free to designate a process for consultation in accordance with the Executive Order at any time. However, Federal agencies will rescind all regulations implementing OMB Circular A-95 on or about April 30, 1983. Therefore, to avoid a gap in the consultation process with the Federal agencies, states should provide the information specified in this letter to OMB *on or before April 30, 1983.*

There are no limits on the number of changes a state can make to its process nor in the time periods in which those changes must occur. Once the initial assurance is provided as outlined above a state can change its process simply by notifying OMB of changes in the single point of contact and/or informing the affected Federal agencies of changes (additions, deletions, etc.) in the list of programs it wants covered.

Two additional features of the Order should be noted. First, under the Order, the state can delegate its review and comment responsibility "to local elected officials," without any limitation on the kinds of programs or activities to be reviewed (e.g., specific cases, whole programs, etc.). The state does not need to inform the Federal Government if or when such a delegation occurs. As long as the comments are transmitted to the agencies via the single point of contact, the agencies will respond to those comments in the manner called for by the Order and its implementing provisions.

Second, it is not necessary that each official comment or recommendation produced by the state's process have a certification of the involvement of elected officials.

Please send the requested assurance and information to: Mr. Harold I. Steinberg, Associate Director for Management, Office of Management and Budget, Room 238, Old Executive Office Building, Washington, D.C. 20503. Mr. James F. Kelly, Deputy Associate Director for Intergovernmental Affairs, will answer any questions you or your staff may have on the Executive Order or its implementation (202/395-3774).

In closing, let me reiterate the President's strong commitment to strengthening our federal system. With Executive Order 12372, Federal agencies have been directed to utilize *your* processes to solicit your views on their proposed actions and to increase their responsiveness to those views. We look forward to hearing from you as we work together to establish this improved system of intergovernmental cooperation.

Sincerely,

David A. Stockman,
Director.

Dated: January 21, 1983.

Harold I. Steinberg,
Associate Director of Management.

[FR Doc. 83-2230 Filed 1-26-83; 8:45 am]
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federal register

Friday
June 24, 1983

Part II

Office of Management and Budget

Intergovernmental Review of Federal Programs

OFFICE OF MANAGEMENT AND BUDGET

Implementation of Executive Order 12372, "Intergovernmental Review of Federal Programs"

AGENCY: Management Reform Division and Associate Director for Management, Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice contains a letter from the President to governors, legislative leaders, and officers of major local government organizations. The notice also discusses how comments addressed to the Office of Management and Budget (OMB) during the public comment period on agency proposed rules on E.O. 12372 were handled, and future steps being undertaken to implement the Order.

FOR FURTHER INFORMATION CONTACT: Walter S. Groszyk Jr., Room 10236, New Executive Office Building, 726 Jackson Place NW., Washington, D.C. 20503.

SUPPLEMENTARY INFORMATION:

Letter from the President

On June 23, 1983, the President wrote an identical letter to the state and local officials indicated above. The letter is as follows:

THE WHITE HOUSE

Washington

June 23, 1983.

Dear Scott: Nearly a year ago, I signed E.O. 12372, "Intergovernmental Review of Federal Programs," which clearly set out the direction I wanted Federal agencies to take in their dealings with state and local governments. Remembering my days in California, I specifically wanted the Federal agencies to be responsive to you and your fellow state and local elected officials. I wanted you to have greater influence in the decisions we take that affect your jurisdictions—whether building a highway, awarding an elderly nutrition grant, or locating a sewage treatment plant.

With their joint publication of final rules tomorrow, the Federal agencies will clearly indicate to you and your colleagues how they will be responsive to your concerns. In essence, we have established an approach that is based on your own review and comment processes.

You now have three months to finalize your approach as we work together toward September 30th, the day this major change takes effect.

I pledge to you the full cooperation and support of my Administration as together, in the spirit of Federalism, we make intergovernmental cooperation a reality.

Sincerely,

Ronald Reagan

[The Honorable Scott M. Matheson, Governor of Utah, Salt Lake City, Utah 84114]

The Office of Management and Budget is publishing this letter for state and local officials who will be working together over the next several months to finalize a state process on intergovernmental coordination and review, and to select federal programs and activities to be covered under that state process.

Comments on Agency Proposed Rules

OMB received numerous comments on the agencies' Notices of Proposed Rulemaking. These comments were provided to all affected agencies as appropriate for inclusion in the agency dockets. As OMB did not publish any Notice of Proposed Rulemaking, we asked the agencies to consider the comments that were sent us. The agencies have done so, and have addressed these comments in the preambles to their final rules.

There were, however, several comments that the rulemaking agencies were unable to respond to. These comments asked that the United States Synthetic Fuels Corporation and the Interstate Commerce Commission be included among the federal agencies to which the Executive Order applies. OMB does not believe the Executive Order should be applied to these agencies. The Interstate Commerce Commission does not engage in federal financial assistance or direct federal development. The developmental activities of the Synthetic Fuels Corporation involve non-governmental entities and the Corporation itself is not an Exective Branch agency in the traditional sense.

Future Steps

OMB intends to work with the 23 federal agencies publishing final rules implementing the Executive Order in today's **Federal Register** on their efforts to carry out these rules. OMB will also receive from each state the initial selection of programs and activites to be covered under the state process and the name of the office or official designated as the single point of contact. OMB has also asked the governors to provide an assurance that their states have taken official action to designate a process, and that local elected officials were involved in the development of the process and in the selection of covered program.

For the time being, state and local officials and other interested parties are asked to contact the federal agency official identified in each final rule as a contact person if questions or concerns arise during the next several months. The federal agencies are directly responsible for the implementation of the Executive Order and will devote adequate staff resources to provide immediate and responsive help. OMB will not have day-to-day operational responsibilities regarding federal programs and activities under the Order, but will oversee agency implementation to ensure federal responsiveness to state and local governments.

Dated: June 23, 1983.

Harold I. Steinberg,

Associate Director for Management.

[FR Doc. 83-17289 Filed 6-23-83; 8:45 am]

BILLING CODE 3110-01-M

State Plans Eligible for Modification Under Executive Order 12372

Section 2(d) of Executive Order 12372 directs Federal agencies to "allow" states to simplify or consolidate existing Federally required State Plans and, where permitted by law, to "encourage" states to substitute their own plans for Federally required state plans.

State plans required by the Federal Government that are eligible for modification (i.e., simplification, consolidation, or substitution) under the Order are listed below.

Dated: June 23, 1983.

Harold I. Steinberg,

Associate Director for Management.

STATE PLANS ELIGIBLE FOR MODIFICATION UNDER EXECUTIVE ORDER 12372

Agency and CFDA No.	Program title
Agriculture:	
10.550	Food Distribution.
10.557	Special Supplemental Food Program for Women, Infants and Children (WIC).
10.559	Summer Food Service Program for Children.
10.560	State Administrative Expenses for Child Nutrition.
10.564	Nutrition Education and Training Program.
10.565	Commodity Supplemental Food Program.
Contact: John Stokes (202/756-3017).	
Education:	
84.002	Adult Education—State Administered Programs.
84.034	Public Library Services.
84.035	Interlibrary Cooperation.
84.048	Vocational Education—Basic Grants to States.
84.049	Vocational Education—Consumer and Homemaking Education.
84.050	Vocational Education—Program Improvement and Supportive Services.
84.052	Vocational Education—Special Programs for the Disadvantaged.

STATE PLANS ELIGIBLE FOR MODIFICATION UNDER EXECUTIVE ORDER 12372—Continued

Agency and CFDA No.[1]	Program title
84.053	Vocational Education—State Advisory Councils.
84.121	Vocational Education—State Planning and Evaluation.
84.126	Rehabilitation Services—Basic Support.
Contact: Larry Walker (202/447-8043).	
Energy:	
81.0041	State Energy Conservation.
81.0042	Weatherization Assistance for Low-Income Persons.
81.0043	Supplemental State Energy Conservation.
81.0050	Energy Extension Service.
81.0052	Energy Conservation for Institutional Buildings.
Contact: Richard Brancato (202/252-6840).	
HHS:	
13.630	Administration on Developmental Disabilities—Basic Support and Advocacy Grants.
13.633	Special Programs for the Aging—Title III, Parts A and B—Grants for Supportive Services and Senior Centers.
13.635	Special Programs for the Aging—Title III, Part C—Nutrition Services.
13.645	Child Welfare Services—State Grants.
13.646	WIN.
13.659	Adoption Assistance.
Interior:	
15.252	Abandoned Mine Land Reclamation Program.
Contact: Gordon Bos (202/245-6036).	
15.605	Fish Restoration.
15.611	Wildlife Restoration.
15.916	Outdoor Recreation—Acquisition, Development and Planning.
15.904	Historic Preservation Grants-in-Aid.
Contact: Timothy S. Elliott (202/343-4722).	
Justice:	
16.540	Juvenile Justice and Delinquency Prevention—Formula Grant Program.
16.541	Juvenile Justice and Delinquency Prevention—Special Emphasis and Technical Assistance Grants (except Grants to Nongovernmental Entities).
Contact: Lynn C. Dixon (202/724-5947).	
Labor:	
(Sec. 104)	Job Training Partnership Act (PL 97-300).
17.207	Employment Service.
Contact: Joyce Kaiser (202/376-6800).	
Transportation:	
20.308	Local Rail Service Assistance.
20.600	State and Highway Community Safety.
20.700	Gas Pipeline Safety.
EPA:	
66.001	Air Pollution Control Program Grants.
66.419	Water Pollution Control—State and Interstate Program Grants.
Contact: Kelley Andrews (202/426-1524).	
	Water Quality Management Planning.
66.432	State Public Water System Supervision Program Grants.
66.433	State Underground Water Source Protection Program Grants.
66.438	Construction Management Assistance Grants.
66.451	Hazardous Waste Management Financial Assistance to States.
66.600	Environmental Protection Consolidated Grants—Program Support.
66.700	Pesticides Enforcement Program Grants.
	Pesticides Applicator Certification and Training.
Contact: Josh Gwynn (202/382-5268).	
FEMA:	
83.503	Emergency Management Assistance.
83.505	State Disaster Preparedness Grants.
83.508	Earthquake and Hurricane Loss Study and Contingency Planning Grants.
83.516	Disaster Assistance: Two subprograms— 1. Temporary Housing (if the State assumes operational responsibility); 2. Individual and Family Grants.
Contact: Herb Jones (202/287-3869).	

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[1] CFDA=Catalog of Federal Domestic Assistance.

[FR Doc. 83-17289 Filed 6-23-83; 8:45 am]

BILLING CODE 3110-01-M

Attachment

Executive Order 12372—Intergovernmental Review of Federal Programs

Note.—Executive Order 12372 was originally published in the **Federal Register** on July 16, 1982 (47 FR 30959).

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.

Ronald Reagan

THE WHITE HOUSE,
July 14, 1982.

[FR Doc. 83-1881 Filed 1-21-83; 8:45 am]
BILLING CODE 3110-01-C

Federal Register
Vol. 48, No. 70
Monday, April 11, 1983

Presidential Documents

Title 3—

The President

Executive Order 12416 of April 8, 1983

Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to allow additional time for implementation by State, regional and local governments of new Federal regulations which foster an intergovernmental partnership and strengthened federalism, it is hereby ordered as follows:

Section 1. The preamble to Executive Order No. 12372 of July 14, 1982 is hereby amended by inserting, after the words "42 U.S.C. 4231(a))", the following phrase: ", Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334)".

Sec. 2. Section 5(b) of Executive Order No. 12372 is amended by deleting "April 30, 1983" and inserting in its place "September 30, 1983."

Sec. 3. Section 8 of Executive Order No. 12372 is amended by deleting "within two years" and inserting in its place "by September 30, 1984".

Ronald Reagan

THE WHITE HOUSE,
April 8, 1983.

[FR Doc. 83-6671
Filed 4-8-83; 12:03 pm]
Billing code 3195-01-M

federal register

Friday
June 24, 1983

Part IV

Department of Commerce

Office of the Secretary

Intergovernmental Review of the Department of Commerce Programs and Activities; Final Rule and

Intergovernmental Review of Federal Programs Under Executive Order 12372; Commerce Programs Subject to the Order; Notice

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Parts 303, 307, and 309

15 CFR Parts 13, 906, 920, 921, 923, 930, 931, 932, 933 and 2301

50 CFR Part 401

[No. 30608-105]

Intergovernmental Review of the Department of Commerce Programs and Activities

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: These regulations implement Executive Order 12372, "Intergovernmental Review of Federal Programs." The regulations apply to federal financial assistance and direct federal development programs and activities of the Department of Commerce. Executive Order 12372 and these regulations are intended to replace the intergovernmental consultation system developed under Office of Management and Budget (OMB) Circular A-95. They also implement section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

EFFECTIVE DATE: September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Barry Bird, Office of General Counsel, 202-377-3084.

SUPPLEMENTARY INFORMATION: On January 24, 1983 (48 FR 3096), the Department of Commerce, along with 25 other federal agencies, published Notices of Proposed Rulemaking (NPRM) to carry out Executive Order 12372 or notices proposing that their programs not be subject to the Order (the Department also published a technical correction to the NPRM on March 1, 1983, 48 FR 8484). Subsequently, two more agencies published NPRMs, bringing to 28 the total number of proposals subject to public comment. The Department, in conjunction with the other 27 federal agencies and OMB, published a notice in the **Federal Register** on April 21, 1983 (48 FR 17101) reopening the comment period, scheduling a public meeting for May 5, 1983, and requesting comments on several tentative responses to comments.

Including comments received by OMB and other federal agencies and which were also incorporated in the Department's rulemaking docket, the Department received approximately 160 comments on government-wide issues during the comment period. In addition, the Department received 11 comments specifically related to the inclusion or exclusion of this Department's programs from the coverage of the Order or other issues pertaining only to the Department.

In preparing the final rule, the Department considered these comments as well as testimony at public meetings held in Washington on March 2, 1983, and May 5, 1983, and a Senate hearing before the Senate Intergovernmental Relations Subcommittee on March 3, 1983.

Following consultation with OMB and the other 22 federal agencies that are issuing a final rule, the Department has made several changes from the proposed rule. The Department is fully committed to carrying out Executive Order 12372, and intends through these regulations to communicate effectively with state and local elected officials and to accommodate their concerns to the greatest extent possible.

Several state, local, and regional agencies asked that the regulations not become effective on April 30, 1983, as the NPRM had contemplated. Postponing the effective date would give state and local elected officials more time to establish the state processes and to consider which federal programs they wished to select for coverage. Responding to these requests, the President amended the Executive Order on April 8, 1983, extending the effective date of these final regulations until September 30, 1983 (48 FR 15587, April 11, 1983). The Department's existing requirements and procedures under OMB Circular A-95 will continue in effect until September 30, 1983.

Introduction to the Rules

The President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," on July 14, 1982 (47 FR 30959, July 16, 1982). The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. The Executive Order:

—Allows states, after consultation with local officials, to establish their own process for review and comment on proposed federal financial assistance and direct federal development;
—Increases federal responsiveness to state and local officials by requiring federal agencies to accommodate state and local views or explain why not;
—Allows states to simplify, consolidate, or substitute state plans; and
—Revokes OMB Circular No. A-95.

Salient Features of the Policies Implementing E.O. 12372

Three major elements comprise the scheme for implementing the Executive Order. These are the state process, the single point of contact, and the federal agency's "accommodate or explain" response to state and local comments submitted in the form of a recommendation.

State Process

The state process is the framework under which state and local officials carry out intergovernmental review activities under the Executive Order. The rule requires only two components for the state process: (1) A state must tell the federal agency which programs and activities are being included under the state process, and (2) a state must provide an assurance that it has consulted with local officials whenever it changes the list of selected programs and activities. (The Executive Order also provides that states must consult with local government in establishing the state process.) Any other components are at the discretion of the state. This lack of prescriptiveness gives state and local officials the flexibility to design a process that responds to their interests and needs.

A state is not required to establish a state process. However, if no process is established, the provisions of the Executive Order and the implementing rules (other than indicating how federal agencies will operate under such situations) are not applied. Existing consultation requirements of other statutes or regulations (except Circular A-95) would continue in effect, including those of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966. The intergovernmental consultation provisions of Circular A-95 end as of September 30, 1983.

While not required by the rule, most state processes will likely include the following components:

—A designated single point of contact;
—Delegations of review and comment responsibilities to particular state, areawide, regional, or local entities;
—Procedures to coordinate and manage the review and comment on proposed federal financial assistance or direct federal development, and to aid in

reaching a state process recommendation;

—A means of consulting with local officials; and

—A means of giving notice to prospective applicants for federal assistance as to how an application is to be managed under the state process.

Federal agencies will list those programs and activities eligible for selection under the scope of the Order. After consulting with local elected officials, the state selects which of these federal programs and activities are to be reviewed throught the state process and sends OMB the initial list of selected programs and activities. Subsequent changes to the list are provided directly to the appropriate federal agencies.

The federal agency will then provide the state process with notice of proposed actions for selected programs and activities.

For any proposed action under a selected program or activity, the state has among its options those of: preparing and transmitting a state process recommendation through the single point of contact; forwarding the views of commenting officials and entities without a recommendation; and not subjecting the proposed action to state process procedures.

For proposed actions under programs or activities not selected, the federal agency would provide notice, opportunities for review, and consideration of comments consistent with the provisions of other applicable statutes or regulations.

Single Point of Contact

The state single point of contact, which may be an official or organization, is the only party that can initiate the "accommodate or explain" response by federal agencies. The single point of contact does so by transmitting a state process recommendation. (The terms "accommodate or explain" and state process recommendation are explained later.) As the phrase suggests, there is to be only one "single point of contact." The other functions undertaken by the single point of contact are submitting for federal agency consideration any views differing from a state process recommendation, and receiving a written explanation of a federal agency's nonaccommodation. No other responsibilities are prescribed by the Federal Government for the single point of contact, although a state could choose to broaden the single point of contact rule.

The single point of contact need not submit for federal agency consideration those views sent to the single point of contact by commenting officials and entities regarding proposed actions where there is no state process recommendation. Commenting officials and entities can submit such views directly to the federal agency.

A state need not designate a single point of contact. However, if a state fails to designate a point of contact, no other entity or official can transmit recommendations and be assured of an accommodate or explain response by the federal agency. Comments or views may be transmitted by these other entities or officials, but need only be considered by the federal agency in accordance with Section 401 of the Intergovernmental Cooperation Act and other relevant statutory provisions.

"Accommodate or Explain"

When a single point of contact transmits a state process recommendation, the federal agency receiving the recommendation must either: (1) Accept the recommendation; (2) reach a mutually agreeable solution with the parties preparing the recommendation; or (3) provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution, i.e., nonaccommodation.

If there is nonaccommodation, the Federal agency is generally required to wait 15 days after sending an explanation of the nonaccommodation to the single point of contact before taking final action.

A "state process recommendation" is developed by commenting state, area wide, regional, and local officials and entities participating in the state process and transmitted by the single point of contact. The recommendation can be a consensus, or views may differ. A state process recommendation which is a consensus—i.e., the unanimous recommendation of the commenting parties—or areawide, regional, and local officials and entities can be transmitted. All directly affected levels of government need not comment on the proposed action being reviewed to form a state process recommendation. Also, the state government need not be party to such a state process recommendation. A state process recommendation can be transmitted on proposed actions under either selected or nonselected programs and activities.

Section-by-Section Analysis

In making changes from the NPRM to this final rule, the Department altered the section and paragraph numbers of various portions of the rule. So that these changes will be easier to follow, we are providing a table showing where each portion of the proposed rule is covered in the final rule:

Proposed rule (section)	Final rule (section)
13.1	13.1.
13.2	13.2.
13.3	13.3.
13.4	13.4.
13.5(a)	13.6(b).
13.5(b)	13.6(d).
13.5(c)	13.6(c).
13.6(a)	13.8(b).
13.6(b)	13.8(a).
13.6(c)	Deleted.
13.6(d)	13.9
13.7(a)	13.10(a)
13.7(b)	13.10(b), (c)
13.8	11

Portions of the final rule not listed in this table (§§ 13.5, 13.6(a), 13.7, and 13.8(c)) are new.

Section 13.1 What is the purpose of these regulations?

There is only one substantive change to this section, but it is an important one. The NPRM, while citing section 401 of the Intergovernmental Cooperation Act (31 U.S.C. 6506) as authority, did not specifically contain provisions to implement some of its requirements. Nor did the NPRM expressly implement section 204 of the Demonstration Cities and Metropolitan Development Act. (42 U.S.C. 334). (The text of sections 401 and 204 are printed in the Department of Agriculture's final rule published elsewhere in this issue (see Supplementary Information section of USDA's document)).

A broad spectrum of commenters, including state, local, and regional agencies, interest groups, and members of Congress, said that the regulations implementing Executive Order 12372 should also ensure that federal agencies carry out their responsibilities under these statutes. In response, the Executive Order was amended to cite section 204 as authority as well as section 401. Consequently, paragraph (a) of this section (as well as the authority citation for the entire regulation) now cites not only the Executive Order but also section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act. Paragraph (b) adds mention of "areawide" entities in keeping with section 204. Other provisions in these regulations carry out the Department's responsibilities under these statutory provisions.

Section 401 emphasizes that federal actions should be as consistent as possible with planning activities and decisions at state, regional, and local levels. The Department, when considering and making efforts to accommodate comments and recommendations it receives under these regulations, recognizes its responsibilities under this section.

A few commenters suggested deleting the language in paragraph (c) of this section which says that the regulations were not intended to create any right of judicial review. The rule retains this language. Clearly, the purpose of the Executive Order and these regulations is to foster improved cooperation between the Department and other federal agencies on one hand, and state and local elected officials on the other. The Order and these regulations presuppose, and rely on, the good faith of federal, state and local officials in communicating with one another and seeking to understand one another's concerns. To regard these regulations as rigid procedures intended to provide new opportunities for litigation would be wholly contrary to their purpose. Agencies have statutory responsibilities under the laws on which these rules are based. In some cases, courts have held agency actions to be judicially reviewable under these statutes. By retaining paragraph (c) in the regulation, the Department is stating only that these regulations are not grounds for judicial review of agency action beyond those afforded by the underlying statutes.

Section 13.2 What definitions apply to these regulations?

Commenters did not object to the definitions in the proposed rule. However, a few commenters asked that various additional terms be defined. The Department does not believe that it is necessary to define any of these additional terms. The term "environmental impact statement" is a well-known term of art in environmental law and planning, is mentioned in the National Environmental Policy Act, and is discussed in numerous court decisions. This term is not used in the regulation. In any event, the Department would not use the term in any but its commonly understood sense.

The Department chose not to include a definition of "direct federal development," or "federal financial assistance." Experience in other regulatory areas (e.g., civil rights regulations with respect to federal financial assistance) has shown that it is difficult to craft a concise, understandable, and comprehensive definition. An abstract definition always carries with it the danger of inadvertently leaving something in that should be excluded or leaving something out that should be included. Moreover, in these cases, the list of state plans and program inclusions accompanying this rulemaking provide adequate operational information upon which state and local elected officials can act.

The Department also decided not to try defining "unusual circumstances." With respect to this term, the dangers of overinclusiveness and underinclusiveness is particularly great. The purpose of providing discretion to deviate from certain requirements in unusual circumstances is to give federal agencies flexibility to deal with unforeseen situations and other problems beyond the agencies' control. As stated in the preamble to the proposed rules, the Department expects to use this provision sparingly, and only when absolutely necessary. Thus it would be counterproductive to attempt, through a definition, to limit this flexibility by anticipating all possible circumstances when it might be needed.

The Department also does not believe a definition of "accommodate" is necessary. The concept of accommodation is addressed in § 13.10. In this section, the Secretary accepts the state process recommendation or reaches a mutually agreeable solution. If the Department does not provide an accommodation in one of these two ways, it must provide an explanation. Since the Department believes the section describes sufficiently what is meant by accommodation, a further definition of the term is not helpful.

Finally, the Department considered whether to include a definition of the term "state process recommendation." The Department concluded that a definition of this term would not materially help clarify those situations in which the Department has an obligation to "accommodate or explain" in response to comments and recommendations. The term's function is discussed at great length in earlier and subsequent sections of this preamble and this should provide sufficient information as to its meaning.

Section 13.3 What programs and activities of the Department are subject to these regulations?

This section is substantively very similar to § 13.3 of the NPRM. A substantial number of commenters contended that it was contrary to the intent of the Order for the Federal Government to exclude any programs or activities from coverage under the Order and these regulations, and that elected officials participating through the state process are the only proper parties to decide what should be excluded from the state process. Other commenters objected to the various criteria used by the federal agencies in developing their lists of programs and activities that were being proposed for exclusion.

The Order does not purport to cover all federal programs and activities. Its scope is limited to federal financial assistance and direct federal development programs and activities, and the Order mandates consultation only when state and local governments provide non-federal funds for, or are directly affected by the proposed federal action. Programs and activities not falling into either of these categories are clearly outside the scope of the Order. It is appropriate for federal agencies to decide which of their activities are federal financial assistance or direct federal development.

There are also actions related to federal financial assistance or direct federal development activities where review and comment as provided by the Executive Order would be superfluous or futile. Certain basic Federal Government functions either have public participation procedures of their own (e.g., rulemaking under the Administrative Procedure Act) or are internal government processes in which state and local coordination and consultation are not appropriate (e.g., formulation of the Department's budget proposals transmitted to OMB, or OMB's recommendations to the President concerning budget formulation). Many research and development grants are competed on a national basis and are awarded for studies unrelated to the responsibilities or interests of state and local government.

Because various programs and activities are not appropriate for coverage under the Order in any circumstance, the Department believes these should continue to be excluded from the listing of program and activities which are eligible for selection for a state process. However, in response to comments, the Department has reviewed the criteria for exclusion as well as the particular exclusions that were proposed in January. These criteria and particular exclusions are discussed in more detail in that section of the preamble covering scope issues.

To provide information on the activities and programs eligible for selection for state processes, the Department is publishing a notice listing these "included" programs and activities. Included programs to which section 204 of the Demonstration Cities and Metropolitan Development Act applies are indicated with an asterisk (*). Section 204 obligations apply with respect to these programs only for projects or activities located in metropolitan areas. Otherwise, these projects are treated like any other program available for selection. This information is being published in a separate notice rather than as part of this rule in order to allow future changes to be made more conveniently. The Department will seek public comment on proposed future program or activity exclusions as these occur.

Section 13.4 What are the Secretary's general responsibilities under the Order?

There were no substantive comments about this section, which restates many of the provisions of the Executive Order. It is unchanged from the NPRM.

Section 13.5 What is the Secretary's obligation with respect to federal interagency coordination?

Some comments, including those suggesting a federal single point of contact, asked the Department and other federal agencies to do more in ensuring that federal agencies communicate not only with state and local elected officials but also with each other. The Department believes that this point is well taken. Many programs and projects require information or approvals from a number of federal agencies, and federal interagency communication is as important, in many cases, as intergovernmental communication. Consequently, the Department is adding a new section, the language of which is derived from subsection 401(d) of the Intergovernmental Cooperation Act. The section provides that the Secretary, to the extent practicable, will consult with and seek advice from all other substantially affected federal departments and agencies in an effort to ensure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

Section 14.6 What procedures apply to the selection of programs and activities under these regulations?

Paragraph (a) of this section is new. It makes clear that any program or activity published in the Federal Register list prescribed by § 13.3 is eligible for selection for a state process. The paragraph also declares, more explicitly than the NPRM, that states are required to consult with local elected officials before selecting programs and activities for coverage. This addition responds to comments that asked that the states' obligation in this regard, as well as in the establishment of a state process, be spelled out in the rule. OMB previously wrote the Governors asking each to provide such an assurance when the state submits its initial list of selected programs and activities.

Several commenters also suggested that these regulations should more firmly require local involvement (e.g., a letter of concurrence) in the establishment of state processes. The Executive Order requires, and OMB's letter to the Governors has reiterated, that there must be consultation between state and local elected officials in the establishment of the process. The Order clearly contemplates that official processes under the Order are established by state and local elected officials in cooperation and consultation with one another. The Department believes that these requirements are clear and that further administrative requirements imposed by regulations are unnecessary and would, in many cases, delay or interfere with the establishment of a state process. In particular, the Department does not believe that the Order contemplates as rigid a requirement as a sign-off by an official of each local jurisdiction in a state before a process may be valid.

Paragraphs (b), (c) and (d) of this section derive from paragraphs (c), (e) and (b), respectively, of § 13.5 of the NPRM. There were no comments objecting to the substance of these paragraphs in the NPRM. Language added to paragraph (c) of the final rule specifies that the state must submit to the Secretary with each change in its program selections an assurance that local elected officials were consulted about the change. This language emphasizes the continuing obligation of states to involve local elected officials in decisions concerning what programs are selected for the state process. The paragraph also allows the Department to establish deadlines for states to inform the Secretary of changes in program selections. The primary reason for this provision is to expedite processing of assistance applications and to reach decisions on projects at times of heavy workload, such as the end of the fiscal year. For example, deadlines could be set to avoid having to make, on short notice, midstream changes in coordination procedures. In addition, the Department has made some editorial changes for better clarity.

A number of commenters asked what procedures apply when a state chooses not to adopt a process under the Order or when a particular program or activity is not selected for a state process. This question is answered in paragraph (b) of § 13.7, discussed below.

Section 13.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

Paragraph (a) specifies that the Secretary's obligation to communicate with state and local elected officials applies to programs and activities subject to the Order that are covered by a state process. This pragraph is intended to emphasize that it is with the state process, not just a Governor's office or other state government entity, that the Secretary will communicate.

The notice provided for by this section is not necessarily exclusive. For example, many programs and activities have independent consultation or notification requirements, which apply even if a program is not selected for a state process. The Department must pursue such notification and consultation practices under these authorities even where the program or activity is selected for a state process. The Department may also take the initiative at any time to contact any interested person or entity about one of the Department's programs or activities. Further, the Department need not rely on the state process or the single point of contact to bring about this communication or consultation.

When the Department notifies the state process with respect to a proposed action concerning a program or activity that has been selected for the state process, notification of areawide, regional, and local entities for purposes of sections 401 and 204 is the responsibility of the state process. The single point of contact could be the information channel for this purpose. The Department need not notify areawide, regional, and local entities separately in this situation, but may do so.

Paragraph (b) is new, and is intended to respond to concerns expressed by commenters on how the Department communicates with local elected officials in situations where a state does not have a state process or where the state process does not cover a particular program or activity. The Department will carry out its responsibilities in these situations by providing notice to state, areawide, regional or local officials or entities that would be directly affected by the proposed federal financial assistance or direct federal development. This notice may be either through publication (e.g., a notice in the Federal Register or in a publication widely available in the area potentially affected by the proposed federal action) or direct (e.g., a letter to the mayor of an affected city). The notice will alert the directly affected entities concerning the proposed action and identifying who in the Department should be contacted for more information.

Section 13.8 How does the Secretary provide states the opportunity of commenting on proposed federal financial assistance and direct federal development?

More commenters—over a third of the total—addressed § 13.6(b) of the NPRM (redesignated § 13.8(a) in the final rule) than any other provision in the proposed regulation. The NPRM proposed that, except in unusual circumstances, the Secretary would give states at least 30 days to comment on any proposed federal financial assistance or direct federal development. Almost all commenters discussing this point felt 30 days was too brief a period to develop comments, particularly when disagreements among various interested parties within the state need to be resolved. Commenters requested a number of longer comment periods, including 35, 45, 50, and 60 days. Some commenters suggested that an additional period—normally between 15 and 30 days—be available to states either at their discretion or when disputes needed to be resolved.

In response to these comments, the Department has decided to lengthen the comment period to 60 days in all cases (including interstate matters), except with respect to federal financial assistance in the form of noncompeting continuation awards, for which the comment period would remain 30 days.

The Secretary will establish, by notice to the single point of contact or to directly affected entities, a date from which the 30 or 60 day comment period will begin to run. This information could be provided, for example, in program specific announcements concerning the availability of grants. Where a program or activity is not selected for the state process, the Department will provide notice, including notice of any adjustment to the comment period that may be necessary, to directly-affected state, areawide, regional and local entities concerning the proposed federal action. Because paragraphs (a) and (b) now provide that the Secretary will establish this starting date, the language of the NPRM permitting the Secretary to establish deadlines for submission of various materials is no longer necessary and has been deleted. When establishing deadlines, the Secretary will ensure that commenting parties under the state process are afforded adequate time to review and comment on an application or project proposal.

Paragraph (b) of this section is derived from § 13.6(a) of the NPRM. The provisions of this section apply to cases in which review, coordination, and communication with the Department have been delegated. This paragraph is intended to make clear that when this responsibility is delegated, these procedures apply just as if the matter were handled at the state level.

Several commenters indicated that a notice of intent to apply for funds was the key step in a timely review, and that a full and complete application was generally received too late and contained too much unnecessary detail to be useful. The Department is aware of these concerns, but in the interest of retaining as much flexibility as possible for the state process, has decided not to require applicants to submit notices of intent or full and complete applications at particular points in time to the state process. The Department encourages applicants at an early stage to notify and talk with officials and entities who have the opportunity to review and comment on the application.

Paragraph (d) of § 13.6 of the NPRM has been droppped. A new § 13.9 of the final rule describes how the Secretary receives and responds to comments.

Section 13.9 How does the Secretary receive and respond to comments?

This new section replaces § 13.6(d) of the NPRM and elaborates in substantially greater detail the Secretary's obligations concerning the receipt of and response to comments. Section 13.6(d) had provided that the Secretary would respond as provided in the Order to all comments from a state that are provided through a state office or official that acts as a single point of contact under the Order between the state and the federal agencies.

About a quarter of all comments received discussed this "single point of contact" concept, with a majority of those comments opposing the required establishment of a single point of contact or expressing serious concerns about how it would work. Some of these comments wanted to permit multiple points of contact within a state instead of only one. The reasons expressed for this opposition or concern fell into two major categories. First, some commenters felt that a single point of contact would be an unnecessary extra layer of bureaucracy imposed on their state process. Second, some commenters felt that the single point of contact could, in effect veto recommendations made by local or regional entities or reduce the comments of such entities to second-class status. In other words, their view was that using a single point of contact would inhibit, rather than facilitate, transmission to federal agencies of the concerns of local elected officials and regional and areawide entities.

In response to these comments, and consistent with the amended Executive Order and the Department's decision explicitly to implement through these regulations section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act, the Department has made substantial changes to this paragraph.

Nonetheless, the concept of the single point of contact is being retained. Satisfactory implementation of the Executive Order requires a means of handling the communication and information flow between federal-state-local and state/local-federal entities and officials in as simple and understandable a way as possible. Designating a single point of contact will serve this end better, in our view, than a multiplicity of communications channels. If all federal agencies and all parties within a state know that a particular office or official performs this state/local-federal communications link for the state process, much confusion and guesswork which otherwise would occur can be eliminated.

We emphasize that, from our perspective, the primary role of the single point of contact is to act as a conduit—a means of transmission—for the comments of state and local elected officials on proposed federal actions. It does not matter to the Department whether this single point of contact also has a substantive role in preparing comments. That is up to the state and local elected officials who establish each state process. The Department is concerned only that the single point of contact communicate those comments and recommendations to the Department.

Paragraph (a) obligates the Secretary to follow the "accommodate or explain" procedures of § 13.10 if two conditions are met. First, the state must have designated a single point of contact. Second, the single point of contact must have transmitted a state process recommendation. (The single point of contact, and not the applicant, must transmit the recommendation to the Department.) If these conditions are not met, the Secretary will still consider all comments received, but the "accommodate or explain" obligation will not apply.

The state process recommendation provision is intended to clarify the reciprocal responsibilities of the state and federal agencies under the Executive Order. The Order is an important part of the Administration's Federalism policy. Federalism means, among other things, that federal agencies should give greater deference to, and make greater efforts to accommodate, the concerns of state and local elected officials than has sometimes been the case in the past. But Federalism also means, in the Administration's view, that state and local officials themselves have a responsibility to attempt to solve intrastate problems without resort to intervention from Washington. Where states and other directly affected parties carry out these responsibilities by forging a state process recommendation, it is highly appropriate for the Federal Government to give these recommendations the increased attention that the "accommodate or explain" process provides. We wish to emphasize that, in any case, the Department will always fully consider all comments it receives under these regulations.

The Department's practical, as well as theoretical, reasons for stressing consensus building were described in the NPRM. We expect that carrying out the Department's "accommodate or explain" responsibility will be greatly aided when a single, unified position is presented for response. However, several commenters said that it would be difficult to achieve—or undesirable to attempt—consensus with respect to some projects or programs. Many of these comments were in connection with the 30-day review period proposed by the NPRM, saying that more than 30 days was needed if consensus were to be reached. The extension of the review period to 60 days in the final rule should mitigate this concern.

In addition, the Department will respond as provided in § 13.10 to a state process recommendation which does not represent a consensus. This means that the single point of contact will not have to submit a recommendation representing unanimous agreement for the recommendation to receive an "accommodate or explain" response from the Department under these rules. Moreover, because the single point of contact is required under paragraph (b)(2) of this section to pass through comments that differ from the state process recommendation, all officials and entities within a state are assured that comments that differ from the state process recommendation on a particular program or project will be seen and considered by the Department.

Paragraph (b)(1) provides that the single point of contact need not transmit comments from directly affected entities when there is no state process recommendation. However, the single point of contact should advise the commenting officials and entities when a state process recommendation is not being transmitted so that these entities will have sufficient time to send their views directly to the Department before the review and comment period ends. These entities may also choose to send their comments directly to the Department concurrent with their sending them to the state process.

Paragraph (b)(2) obligates the single point of contact to transmit to the Department all comments received concerning a selected program or activity that differ from a state process recommendation. This requirement will ensure that, as sections 401 and 204 specify, the Department considers all views from state, areawide, regional, and local entities or officials. It should also reassure commenters that the views of concerned officials are not subject to any "pocket veto" by the single point of contact.

In paragraphs (c) and (d), the Department makes provision for submission of comments in situations where there is no state process or for programs that are not selected for a state process. Paragraph (c) provides that in the absence of a state process, or if the single point of contact does not transmit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. The Department is obligated to consider these comments. Paragraph (d) makes a similar provision for situations where the state process does not cover a particular program or activity of the Department. The Department deliberated whether in this rule to require applicants to transmit all comments they had received. The Department decided not to impose such a requirement in this rule but expects applicants to do so. The Department retains the option of selectively requiring an applicant to do this as part of an application kit or in a notice of availability of funds.

Paragraph (e) simply reiterates the Department's obligation to consider all the comments it receives from state, areawide, regional and local officials and entities under these regulations, whether they are transmitted through a single point of contact or otherwise provided to the Department. This obligation derives directly from sections 401 and 204.

A number of commenters suggested that the Department and other federal agencies impose various administrative requirements with respect to financial assistance programs. Among the suggestions were that federal agencies tell applicants about the requirements of each state process, that comments from the state process be sent to the applicant before the application is forwarded and that the applicant attach these to the application, that the state process be able to require a "notice of intent," that federal agencies not act on an application before receiving comments from the state process, that federal agencies require applicants to submit materials requested by the state process, and that federal agencies have applicants themselves contact interested local parties.

Although the Department recognizes a responsibility to work with applicants so this new intergovernmental consultation system functions smoothly, the Department does not believe it is appropriate to impose specific regulatory requirements regarding administrative details of this kind. The Department believes that each state process should establish the "paper flow" procedures best suited to its situation. Where the state process decides to send comments to the applicant, the Department will expect the applicant to forward those comments with its application to the Department. However, this does not obviate the necessity for transmitting the state process recommendation to the Department through the single point of contact. The point here is that state processes have the option of also sending comments through the applicant to the Federal Government with each application, and thus alleviate concerns that the application and comments might otherwise fail to be joined together by the Department.

Section 13.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

Paragraph (a) of this section now provides that if a state process provides a state process recommendation to the Department through a single point of contact, the Department becomes obligated to accommodate or explain. This means that the Department need not accommodate or explain comments that: (1) Do not constitute or form the state process recommendation, or (2) are not provided through a single point of contact. The Department will fully consider all such comments, but there will be no "accommodate or explain" obligation.

As under the proposed regulations, "accommodating" a state process recommendation means either accepting that recommendation or reaching a mutually agreeable solution with the state process. In response to a substantial number of comments, paragraph (a)(3) of the final rule provides that all explanations of nonaccommodation will be in writing. This is not to say that the Department may not also inform the single point of contact of a nonaccommodation by telephone, other telecommunication, or in a personal meeting. However, whether or not such conversation or communication occurs, the Department will always send a written explanation of the nonaccommodation.

As under the proposed rule, the Department will not implement a decision for ten days after the single point of contact receives the explanation. A few commenters suggested that this waiting period should be longer than ten days; however, the department believes that to avoid unduly delaying the award of federal financial assistance or the start of direct federal development, a longer period should not be provided. The Department believes that ten days will be adequate time for the state process to formulate an appropriate political response if the issue is sufficiently important within the state.

The Department has included a new paragraph (c) in the regulation to clarify when the ten-day waiting period begins to run. If the Department has made a telephone call (or other oral communication) to the single point of contact advising of the nonaccommodation and providing an explanation, the ten-day period begins to run from the date of that communication, even though the written explanation arrives later. If the Department sends a letter but does not make a telephone call, the ten-day period begins on the date the single point of contact is presumed to have received it. This presumptive date of receipt is five days from the date on which the letter is sent, a period consistent with the longstanding successful practice of the Social Security Administration and longer than that used for presumptive receipt of official papers in many other legal contexts. In effect, the Department will be free to begin carrying out its decision on the sixteenth day after the day the Department sent the letter.

Some commenters indicated what they sought most was federal agency responsiveness to their comments. These commenters felt the lack of responsiveness was a significant failing of the intergovernmental process under OMB Circular A–95. In providing explanations of nonaccommodation, the Department will make an effort to be as responsive as practicable consistent with the Department's responsibilities to accomplish program objectives and to expend funds in a sound financial manner.

Section 13.11 What are the Secretary's obligations in interstate situations?

This section is based on § 13.8 of the NPRM. One feature of the NPRM section—the provision of 45 days for comment in interstate situations—has been dropped because the comment period in the final rule is 60 days in all cases except noncompeting continuation awards.

The Department received several comments on its handling of interstate situations. Most of these comments asked for greater federal guidance or involvement in interstate situations, especially when various affected states did not agree with one another. Some commenters also said that greater attention should be given to the role of interstate metropolitan areas and the designated areawide entities that represent them.

The Department does not believe that it is necessary to change the proposed regulation to provide any particular procedure for resolving interstate conflicts. It is clearly in the Department's interest to have affected states mutually agree on the Department's programs and projects that affect interstate situations. On a case-by-case basis, as appropriate, the Department will work with officials of states involved in an interstate situation in an attempt to secure this agreement. This should not be a regulatory requirement, however.

The Department believes that designated areawide agencies in interstate metropolitan areas have an important role to play. Consequently, paragraph (a)(3) now specifically mentions designated areawide entities among those which the Department will make efforts to notify in interstate situations. OMB will periodically provide the Department with a list of designated interstate areawide entities. Paragraph (a)(4) provides that the recommendation of a designated interstate areawide entity will be given "accommodate or explain" treatment by the Department if it is sent through a state single point of contact, and if the areawide entity has been delegated a review and comment role for the program or activity being commented on by a state process.

For example, the Metropolitan Washington, D.C. Area Council of Governments (COG) represents jurisdictions in an interstate area including parts of Maryland, Virginia and the District of Columbia. If that Council of Governments was delegated a specific review role and makes a recommendation on a proposed action by the Department, and that recommendation is transmitted to the Department through the single point of contact of either Maryland, Virginia, or the District of Columbia, the Department is obligated to accommodate or explain. If a state process recommendation differing from the Washington COG recommendation is also transmitted by another state's single point of contact, the Department would also accommodate or expain that recommendation as well.

Other Comments

In addition to comments specifically pertaining to various features of these regulations, there are several other comments made to the Department to which the Department would like to respond. Several commenters said that the Office of Management and Budget should have a stronger oversight role, thus ensuring that federal agencies carry out their obligations under the Order and these regulations. Behind these comments seems to be a concern that federal agencies are not really interested in consulting with state and local governments and a view that, in the absence of an OMB "policing" rule, agencies would tend to ignore those obligations.

The Department wants to state unequivocally that it is fully committed to implementing all of the provisions of the Order and these regulations, and will act quickly to respond to complaints from state, areawide, regional and local officials and entities that mistakes or omissions have been made with respect to the Department's obligations. Carrying out this Order faithfully and forcefully is an important part of the Administration's Federalism policy, and the Administration's policymaking officials intend the policy to be carried out fully by everyone in their agencies.

OMB will have a general oversight role with respect to federal agency implementation of the Order, including the required preparation of a report in late 1984 concerning the operation of the new process. OMB will periodically review agency records of nonaccommodations and waivers. OMB has advised the agencies, however, that a detailed operating review or "policing" relationship would not be consistent with the role of OMB vis-a-vis the other federal agencies. OMB is not intended to have day-to-day operational responsibilities with respect to federal programs. Concerning these regulations, as with respect to other agency operational responsibilities, the officials of this Department are responsible to the Secretary, who in turn is responsible to the President for carrying out important Administration policy.

Finally a number of commenters reminded the Department and other agencies that we should continue to follow existing statutory requirements that affect many federal agencies, with respect to environmental impact statements, historic preservation, civil rights, etc. The Department will continue to follow all such crosscutting requirements and other independent consultation requirements. To the extent that it is feasible to do so, the Department will work with states to integrate handling of some of these crosscutting requirements with the official state process. However, regardless of the structure of a state's process or whether there is a state process at all, the Department will continue to meet all legal requirements in these areas.

In a related question, some commenters asked how certain requirements concerning environmental impact statements, coastal zone management, and health systems agencies would be handled administratively under these regulations. Under the A-95 system, clearinghouses often coordinated responses to Federal agencies relating to these matters. Under the Executive Order system, a state could, if it wished, designate the single point of contact or other entity to circulate documents and to bear the administrative responsibility for coordination and review. Federal agencies could also continue any arrangements or relationships with entities in the state that now exist to facilitate this review and comment. Where it is feasible, we encourage a coordinated response under these regulations and other coordination requirements.

Scope

In addition to general comments regarding the scope of the Executive Order addressed in the section-by-section analysis to § 13.3 above, the Department received 11 comments on particular Commerce programs which the commenters believed should or should not be eligible for state selection. While one commenter recommended that certain programs deemed eligible for state selection should be excluded from coverage and another supported the Department's list of excluded programs, other commenters recommended that the Department exclude fewer programs from eligibility for state selection. In part, we believe these commenters did not understand the limited nature of the Department's exclusions.

In determining which programs are subject to E.O. 12372, the Department has, as one commenter suggested, been guided by section 1 of E.O. 12372. All Commerce programs which directly affect state and local governments, or for which state and local governments provide the non-Federal matching share, are eligible for selection. While the phrase "directly affects" can mean different things to different people, the Department has attempted to be overinclusive rather than underinclusive. All of the Commerce programs currently covered by OMB Circular A-95 are eligible for selection by the states. Several other programs not covered by A-95 are also eligible for selection. EDA's Business Development Program (CFDA #11.301) which provides loans and guarantees is eligible, as in NOAA's Intergovernmental Climate Program (#11.428). Certain other programs are also eligible which were not covered by A-95 to the extent that the applicant is a state or local government. These programs are NOAA's Sea Grant Support Program (#11.417), Financial Assistance for Marine Pollution Research (#11.426), and Fisheries Development and Utilization Research and Development (#11.427); and MBDA's minority business programs (#11.800).

NOAA Programs

Several commenters submitted comments about programs of the National Oceanic and Atmospheric Administration (NOAA). One commenter suggested that the Sea Grant Support Program (#11.417) and Marine Pollution Research (#11.426) should be totally excluded from coverage under E.O. 12372, instead of partially excluded as proposed. Because state and local governments are eligible to apply for assistance under the programs, the Department believes they must be eligible for state selection when the applicant is a state or local government. This commenter also suggested that the Department should exclude the Intergovernmental Climate Program (#11.428); another commenter suggested the program should be included. Because this program directly affects state and local governments, it is clearly covered by E.O. 12372.

Two commenters requested the Department to include NOAA's Sea Grant Program (#11.417), the Marine Pollution Research Program (#11.426), and the Fisheries Research Program (#11.427). These programs generally involve research performed by non-governmental entities (which includes universities and colleges) outside the scope of the Order. Because state and local governments may legally apply for assistance under these programs, however, these programs are included when the applicant is a state or local government agency and states may request to review such applications under their E.O. 12372 process. One commenter also requested the Department to include two NOAA programs which provide assistance to compensate fishermen for losses incurred when their vessels are seized or damaged by foreign vessels or foreign countries (#11.409, 11.410). The Department will exclude these programs because they do not directly affect state or local governments and are outside the scope of the Order.

MBDA Programs

Four commenters requested the Department to include the programs of Minority Business Development Agency (MBDA) (#11.800). These programs are designed to provide minority business with management and technical services which may prove useful in increasing their competitiveness. The Department is excluding these programs because they do not directly affect state and local governments. Because assistance is occasionally awarded to agencies of state and local governments to provide services to minority business, however, states may select to review applications when the applicant is a state or local government agency.

EDA Programs

Two commenters requeste the Department to include economic development programs involving awards to Indian tribes. The Department has proposed to exclude the Economic Development Administration's (EDA) grant programs insofar as they involved Indian tribes. Because the Order applies to activities which directly affect State and local governments, the Department is excluding these programs when the applicant is an Indian tribe. If a particular project to an Indian tribe may have substantial impact outside the reservation which directly affects a state or local government's interests, the Department intends to review the potential impact on a case-by-case basis and will request the applicant to submit the application to E.O. 12372 review if appropriate. Further, if a state law or other special circumstances require a state to receive notification of applications of Indian tribes, upon request, EDA will notify the state process.

Several commenters requested the Department to include the EDA Technical Assistance Program (#11.307). EDA may extend assistance under the Program to public and private entities. The Department has included this program when the assistance is provided to state and local governments or when assistance is extended to conduct research into economic development problems with a local focus which may affect state or local interests. Because EDA may also extend technical assistance to private entities for business-related projects such as preparation of a marketing study or provision of management assistance, the Department believes that any effect on state and local governments would be indirect and outside the scope of the Order. (Projects involving loan and guarantee assistance to private firms under the Business Development Program CFDA #11.301, which may involve a local matching share requirement, are eligible for state selection).

Other Programs

One commenter requested the Department to include the National Telecommunications and Information Administration's Public Telecommunications Facilities Program (#11.550). Another requested the Department to exclude the Program. Because this program requires NTIA applicants to work with the appropriate state agency, it directly affects the state government and is subject to the Order. Accordingly, the Department has included this program and states may choose to select it for review under the state process. (The Public Telecommunications Services Program, #11.551, referred to by two commenters is no longer in operation.)

Another commenter requested the Department to include the activities of the National Bureau of Standards (#11.601, 11.603, 11.604). Inasmuch as these activities involve various types of research and do not have any unique geographic focus or impact they do not directly affect state and local governments and are outside the scope of the Order.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Department and allow state and local governments to establish cost effective consultation procedures. For this reason, the Department believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of data.

List of Subjects in 15 CFR Part 13

Intergovernmental relations.

1. For the reasons set out in the Preamble, the Department of Commerce amends Title 15, Code of Federal Regulations, by adding a new Part 13, to read as follows:

TITLE 15—[AMENDED]

PART 13—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF COMMERCE PROGRAMS AND ACTIVITIES

Sec.
13.1 Purpose.
13.2 Definitions.
13.3 Programs and activities of the Department subject to the regulations.
13.4 General responsibilities under the Order.
13.5 Obligations with respect to federal interagency coordination.
13.6 State selection of programs and activities.
13.7 Communication with state and local officials concerning the Department's programs and activities.
13.8 Opportunity to comment on proposed federal financial assistance and direct federal development.
13.9 Receipt of and response to comments.
13.10 Accommodation of intergovernmental concerns.
13.11 Obligations in interstate situations.
13.12 [Reserved]
13.13 [Reserved]

Authority: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334).

§ 13.1 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 13.2 Definitions.

"Department" means the U.S. Department of Commerce.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Commerce or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 13.3 Programs and activities of the Department subject to the regulations.

The Secretary publishes in the Federal Register a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 13.4 General responsibilities under the Order.

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance from, or direct federal development by, the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance and direct federal development, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed federal financial assistance and direct federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

§ 13.5 Obligations with respect to federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 13.6 State selection of programs and activities.

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 13.3 of this Part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with elected local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 13.7 Communication with state and local officials concerning the Department's programs and activities.

(a) For those programs and activities covered by a state process under § 13.6, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process. This notice may be made by publication in the **Federal Register** or other appropriate means, which the Department in its discretion deems appropriate.

§ 13.8 Opportunity to comment on proposed federal financial assistance and direct federal development.

(a) Except in unusual circumstances, the Secretary gives state processes or directly affected state, areawide, regional and local officials and entities at least:

(1) 30 days from the date established by the Secretary to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and

(2) 60 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 30-day opportunity for review and comment.

§ 13.9 Receipt of and response to comments.

(a) The Secretary follows the procedures in § 13.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 13.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 13.10 of this Part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 13.10 of this Part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 13.10 Accommodation of intergovernmental concerns.

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 13.11 Obligations in interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 13.10 of this Part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 13.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 13.12 [Reserved]

§ 13.13 [Reserved]

2. The Secretary also removes the following regulations which implement OMB Circular A–95:

TITLE 13—[AMENDED]

PART 309—[AMENDED]

§ 309.17 [Removed]

(a) 13 CFR is amended by removing §309.17.

TITLE 15—[AMENDED]

PART 905—[REMOVED]

(b) 15 CFR is amended by removing Part 905.

3. The Secretary amends the following regulations to conform them to the changes made above:

TITLE 13—[AMENDED]

PARTS 303 AND 307—[AMENDED]

§§ 303.4–3 and 307.53 [Amended]

(a) 13 CFR is amended by removing §303.4–3(b)(5)(i), § 303.4–3(d)(4)(i), and § 307.53(b)(1).

TITLE 15—[AMENDED]

PARTS 920, 921, AND 923—[AMENDED]

§§ 920.53, 920.55, 920.58, 920.59, 920.61, 921.14, 923.92, 923.95, 923.96 [Amended]

(b)(1) 15 CFR 920.53(b) is amended by removing the phrase "OMB Circular A–95, under * * *" so that the sentence reads, "Should the State wish to allocate a portion of its program development grant to an areawide/regional agency under the provisions of subsection 305(g) of the Act, and in the absence of State law to the contrary, preference shall be given to those agencies recognized or designated as areawide/regional comprehensive planning and development agencies under the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 or Title IV of the Intergovernmental Cooperation Act of 1968." The last sentence is removed.

(2) 15 CFR 920.55(b) is amended by substituting the phrase "E.O. 12372" for the phrase "OMB Circular A–95" in the first sentence. The remainder of (b) is removed.

(3) 15 CFR 920.58(a) and 920.59(a) are amended by revising the third sentence to read, "An intergovernmental review process, if one is established by the state pursuant to E.O. 12372, should be followed."

(4) 15 CFR 920.61(d), 920.61(f), 923.96(a), and 923.96(c) are amended by substituting the phrase "Executive Order 12372" wherever those sections contain reference to "Office of Management and Budget Circular Number A–95", "OMB Circular A–95 (revised)", or "A–95."

(5) 15 CFR 921.14(c) is amended by removing the phrase "appropriate state and regional A–95 clearinghouses" and substituting the phrase "any other agency or office which may be identified by the State if the State has established an intergovernmental review process pursuant to E.O. 12372" in the first sentence. The last sentence is removed.

(6) 15 CFR 923.92(b)(3) is amended by removing the phrase "OMB Circular A–95, under * * *" so that the sentence reads, "Should the State wish to allocate a portion of its program development grant to an areawide/regional agency under the provisions of subsection 305(g) of the Act, and in the absence of State law to the contrary, preference shall be given to those agencies recognized or designated as areawide/regional comprehensive planning and development agencies under the provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 or Title IV of the Intergovernmental Cooperative Act of 1968."

(7) 15 CFR 923.95(b) is amended by removing the last sentence.

PARTS 930, 931, 932 AND 933—[AMENDED]

§§ 930.35, 930.54, 930.61, 930.93, 930.94, 930.95, 930.96, 930.98, 931.38, 931.50, 931.77, 931.91, 931.92, 932.42, 933.42 [Amended]

(c)(1) 15 CFR 930.35(b) and 930.54(a) are amended by substituting the phrase "Intergovernmental Review Process established pursuant to E.O. 12372" for the phrase "OMB Circular A–95 review" or "A–95 review."

(2) 15 CFR 930.61(c)(3) is amended by removing the phrase "A–95 public notices."

(3) 15 CFR 930.93 is revised to read as follows:

§ 930.93 Intergovernmental Review Process.

The term "Intergovernmental Review Process" describes the procedures established by states pursuant to Executive Order 12372, "Intergovernmental Review of Federal Programs," and implementing regulations of the review of Federal financial assistance to states and local governments.

(4) Former 15 CFR 930.94 is redesignated as new 15 CFR 930.95 and 930.95 as redesignated is amended as follows:

(i) 15 CFR 930.95(a) is amended by removing in the first sentence the phrase, "to assist A–95 state and areawide clearinghouses."

(ii) 15 CFR 930.96(c) is amended by removing the phrase, "and to the A-95 state and areawide clearinghouse."

(5) Former 15 CFR 930.95 is redesignated as new 15 CFR 930.94 and is revised to read as follow:

§ 930.94 State Intergovernmental Review Process for Consistency.

The process by which states with approved coastal management programs may review applications from state agencies and local governments for Federal assistance should be developed by each state in accordance with Executive Order 12372 and implementing regulations. In accordance with the Executive Order and regulations, states may use this process to review such applications for consistency with their approved coastal management programs.

(6) 15 CFR 930.96(a), 930.96(b) and 930.98(a) are amended by substituting the phrase "Intergovernmental Review Process" for the phrase "OMB A-95 process" wherever it occurs.

(7) 15 CFR 930.98(b) is amended by removing the word "clearinghouse" and substituting "state agency".

(8) 15 CFR 930.98(a) is amended by removing in the first sentence the phrase "the appropriate clearinghouse" and adding the phrase "any other agency or office which may be identified by the state in its Intergovernmental Review Process pursuant to Executive Order 12372." In the last sentence the phrase "clearinghouse and other" is removed so that the sentence reads as follows:

"State agencies must inform the parties * * *".

(9) 15 CFR 931.38(b)(2), 931.80(c)(4), 931.77(c)(4)(v) and 931.77(c)(5) are removed. 15 CFR 931.38(b) (3) and (4) are redesignated as 931.38(b)(2) and 931.38(b)(3), respectively.

(10) 15 CFR 931.81 is amended by removing the phrase, "A-95, 'Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects' (FR 2052, Jan. 13, 1976) and" so that the sentence reads, "Administrative procedures for grants and credit assistance are based to the maximum extent practicable upon the Office of Management and Budget Circular A-102 "Uniform Administrative Requirements for Grants-in-Aids to State and Local Governments' (34 CFR Part 256).

§ 931.92 [Removed]

(11) 15 CFR 931.92 is removed.

(12) 15 CFR 932.42(a) is amended by substituting in the first sentence the phrase "E.O. 12372" for the phrase "Part I, Attachment A of OMB Circular A-95 (revised)". The remainder of the section is removed.

(13) 15 CFR 932.42(c) and 933.42(b) are amended by substituting the phrase "E.O. 12372" wherever they refer to "Office of Management and Budget Circular A-95," or "A-95."

(14) 15 CFR 933.42(a) is amended by substituting in the first sentence the phrase "E.O. 12372" for the phrase "OMB Circular A-95 (revised)."

PART 2301—[AMENDED]

(d) 15 CFR § 2301.8 is amended by revising paragraph (e) to read as follows:

§ 2301.8 Service of applications.

* * * * *

(e) The State office established to review applications under Executive Order 12372, if the State has established such an office and wishes to review these applications.

TITLE 50—[AMENDED]

PART 401—[AMENDED]

(e) 50 CFR § 401.5 is revised to read as follows:

§ 401.5 Coordination with States.

The Secretary will approve an Application For Federal Assistance only after he has coordinated the application with the State office established to review applications under Executive Order 12372 (if the State has established such an office and wishes to review these applications) and other non-Federal entities which have management authority over the resource to be affected.

Dated: June 17, 1983.

Malcolm Baldrige,

Secretary of Commerce.

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DEPARTMENT OF COMMERCE

Office of the Secretary

Intergovernmental Review of Federal Programs Under Executive Order 12372; Commerce Programs Subject to the Order

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of Commerce programs subject to the Order.

SUMMARY: In the final rules section of this issue of the **Federal Register** the Department is publishing its final regulations establishing new procedures for providing for intergovernmental review of its programs and activities as required by E.O. 12372. Under the new procedures, states are given flexibility to select which programs of the Department they want to review through the state E.O. 12372 process. This notice informs state and other interested individuals and organizations of the Commerce programs which are within the scope of E.O. 12372 and eligible for selection by the states.

FOR FURTHER INFORMATION CONTACT: Barry Bird, Office of General Counsel, 202–377–3084.

SUPPLEMENTARY INFORMATION: Section 1 of Executive Order 12372 requires the Department to provide opportunities to elected officials of state and local governments to consult on proposed federal financial assistance or direct federal development if the federal activity directly affects them or if they provide non-federal funds for the activity. The Executive Order and the Department's implementating regulations allow states to establish a state process to provide for that consultation and to select which Federal programs subject to section 1 of the Order they wish to cover by their process. This notice lists the programs at the Department which are subject to E.O. 12372 ("Included Programs"). The Department published a list of Commerce programs not subject to the Order in conjunction with the proposed rule (January 24, 1983, 48 FR 3101).

States may select (or not select) any of the included programs for review through the state process. As noted in the preamble to the final rule, states must send the initial list of selected Commerce programs to the Office of Management and Budget. Subsequently, states must send changes to the states list directly to the agencies affected (e.g., EDA) or to the Department's Office of Intergovernmental Affairs, U.S. Department of Commerce, Washington, D.C. 20230.

One of the changes made in the final regulations was to add provisions to implement section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334). This section applies to programs for projects or activities located in metropolitan areas which involve assistance for carrying out open-space land projects or for the planning or construction of hospitals, airports, libraries, water supply or distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects. Programs at the Department which may involve projects subject to the requirements of section 204 of this Act and the relevant provisions in the Commerce final regulations implementing E.O. 12372 are marked with and asterisk (*).

In developing the list of Commerce programs subject to E.O. 12372, the Department has attempted to implement the requirements of section 1 of the Order fully. All Commerce programs which affect state and local governments directly or for which state and local governments supply the non-Federal share of funds have been included. Because several statutes administered by Commerce allow the Department to extend assistance to both public and private entities, however, some programs may be subject to the Order but only when the applicant is a state or local government. For example, the Economic Development Administration may extend technical assistance to various public and private entities. To the extent such assistance is extended to a state or local government it is clearly within the scope of the Order. To the extent the assistance is extended to a private business (to fund, for example, marketing studies or to provide management and operational assistance) and does not involve unusual aspects which directly affect a state or local government, it is not covered by the Order. Accordingly, certain programs listed below are only partially included. (Numbers refer to location in the Catalogue of Federal Domestic Assistance. For purposes of this notice, all universities and colleges are deemed nongovernmental.)

The Department would point out that every Commerce program currently subject to OMB Circular A–95 is eligible for state selection under the E.O 12372 procedures. In addition, two programs are eligible which were not subject to A95—CFDA #11.301 (Economic Development Business Development) and #11.428 (Intergovernmental Climate Program). Several other programs which were not subject to A–95 are partially included insofar as assistance is extended to state and local governments. These programs are #11.417 (Sea Grant Support), #11.426 (Marine Pollution Research), #11.427 (Fisheries Development and Utilization Research and Development) and #11.800 (Minority Business Development Assistance).

Included Programs

*11.300 Economic Development—Grants for Public Works and Development Facilities
11.301 Economic Development—Business Development Assistance
*11.302 Economic Development—Support for Planning Organizations
*11.303 Economic Development—Technical Assistance (when the application is by or for the benefit of a state or local government)
*11.304 Economic Development—Public Works Impact Projects
*11.305 Economic Development—State and Local Economic Development Planning
*11.306 Economic Development—District Operational Assistance
*11.307 Special Economic Development and Adjustment Assistance Program Long-Term Economic Deterioration
11.405 Anadromous and Great Lake Fisheries Conservation (except for research projects involving nongovernmental entities)
11.407 Commercial Fisheries Research and Development
11.417 Sea Grant Support (state and local government applicants)
*11.419 Coastal Zone Management Program Administration
11.420 Coastal Zone Management Estuarine Sanctuaries
*11.421 Coastal Energy Impact Program—Formula Grants
*11.422 Coastal Energy Impact Program—Planning Grants
*11.423 Coastal Energy Impact Program—Loans and Guarantees
*11.424 Coastal Energy Impact Program—Environmental Grants
*11.425 Coastal Energy Impact Program—Outer Continental Shelf State Participation Grants
11.426 Financial Assistance for Marine Pollution Research (state and local government applicants)
11.427 Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program (state and local government applicants)
11.428 Intergovernmental Climate Program
11.550 Public Telecommunications Facilities
11.800 Minority Business Development—Management and Technical Assistance (state and local government applicants)

Dated: June 17, 1983.

Malcolm Baldrige,

Secretary of Commerce.

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